

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 10-13164 (JPM)

4 - - - - - x

5 In the Matter of:

6

7 FAIRFIELD SENTRY LIMITED and Nomura International PLC,

8 Debtors.

9 - - - - - x

10 Adv. Pro. No. 10-03496 (JPM)

11 - - - - - x

12 FAIRFIELD SENTRY LTD. (IN LIQUIDATION), et al.,

13 Plaintiffs,

14 v.

15 THEODOOR GGC AMSTERDAM et al,

16 Defendants.

17 - - - - - x

18 Adv. Pro. No. 10-03800 (JPM)

19 - - - - - x

20 IRVING H. PICARD, TRUSTEE FOR THE LIQUIDATION OF B,

21 Plaintiffs,

22 v.

23 FAIRFIELD GREENWICH GROUP et al,

24 Defendants.

25 - - - - - x

1 Adv. Pro. No. 10-03627 (JPM)

2 - - - - - x

3 KRYS, ET AL.,

4 Plaintiffs,

5 v.

6 BNP PARIBAS SECURITIES SERVICES LUXEMBOURG, et al.,

7 Defendants.

8 - - - - - x

9 Adv. Pro. No. 10-03630 (JPM)

10 - - - - - x

11 FAIRFIELD SENTRY LTD. (IN LIQUIDATION), et al.,

12 Plaintiffs,

13 v.

14 HSBC SECURITIES SERVICES (LUXEMBOURG) SA, et al.,

15 Defendants.

16 - - - - - x

17 Adv. Pro. No. 10-03635 (JPM)

18 - - - - - x

19 FAIRFIELD SENTRY LTD. (IN LIQUIDATION), et al.,

20 Plaintiffs,

21 v.

22 UNION BANCAIRE PRIVEE, UBP SA et al,

23 Defendants.

24 - - - - - x

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1 - - - - - x

2 Adv. Pro. No. 10-03636 (JPM)

3 - - - - - x

4 FAIRFIELD SENTRY LTD. (IN LIQUIDATION), et al.,

5 Plaintiffs,

6 v.

7 UNION BANCAIRE PRIVEE, UBP SA et al,

8 Defendants.

9 - - - - - x

10 Adv. Pro. No. 19-01122 (JPM)

11 - - - - - x

12 FAIRFIELD SENTRY LTD. (IN LIQUIDATION), et al.,

13 Plaintiffs,

14 v.

15 CITCO GLOBAL CUSTODY NV, et al.,

16 Defendants.

17 - - - - - x

18 United States Bankruptcy Court

19 One Bowling Green

20 New York, NY 10004

21

22 May 3, 2024

23 9:35 a.m.

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1 B E F O R E :

2 HON JOHN P. MASTANDO III

3 U.S. BANKRUPTCY JUDGE

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1 10-03630-jpm Fairfield Sentry Ltd. (In Liquidation), et al.,
2 v. HSBC Securities Services (Luxembourg) SA, et al.,
3 Notice of Hearing on Private-Space Ltd.'s Motion to Dismiss
4 for Lack of Personal Jurisdiction Under Rule 12(b)(2)

5

6 Adversary proceeding: 10-03627-jpm Krys et al v. BNP Paribas
7 Securities Services Luxembourg et al

8 Notice of Agenda for Matters Scheduled for Hearing on May 3,
9 2024

10

11 Notice of Hearing on Motion to Dismiss for Lack of Personal
12 Jurisdiction (related document(s) 174)

13

14 Notice of Hearing on Motion to Dismiss for Lack of Personal
15 Jurisdiction (related document(s) 171)

16

17 Amended Notice of Hearing on Motion to Dismiss for Lack of
18 Personal Jurisdiction (related document(s) 171)

19

20 Notice of Agenda for Matters Scheduled for Hearing on May 3,
21 2024

22

23 Adv. Pro. No. 10-03635 (JPM) Fairfield Sentry Limited (In
24 Liquidation) et al., v. Union Bancaire Privee, UBP SA et al

25 Notice of Agenda for Matters Scheduled for Hearing on May 3,

1 2024

2

3 Notice of Hearing on UBS AGs Motion to Dismiss for Lack of
4 Personal Jurisdiction Under Rule 12(b) (2)

5

6 Adv. Pro. No. 10-03636 (JPM) Fairfield Sentry Ltd. (In
7 Liquidation), et al., v. Union Bancaire Privee, UBP SA et al
8 Notice of Agenda for Matters Scheduled for Hearing on May 3,
9 2024

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11 Notice of Hearing on UBC AGs and UBS Jersey Nominees
12 Limiteds Motions to Dismiss for Lack of Personal
13 Jurisdiction Under Rule 12(b) (2)

14

15 Adv. Pro. No. 10-03496 (JPM) Fairfield Sentry Ltd. (In
16 Liquidation), et al., v. Theodoor GGC Amsterdam et al,
17 Notice of Hearing on Motion to Dismiss for Lack of Personal
18 Jurisdiction (10-03627) (related document(s) 3971)

19

20 Amended Notice of Hearing on Motion to Dismiss for Lack of
21 Personal Jurisdiction (10-03627) (related document(s) 3971)

22

23 Adv. Pro. No. 10-03800 (JPM) Irving H. Picard, Trustee for
24 the Liquidation of B, v. Fairfield Greenwich Group et al
25 Notice of Adjournment of Hearing / Notice of Adjournment of

1 Status Conference

2

3 Notice of Adjournment of Hearing / Notice of Adjournment of
4 Status Conference

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6 Notice of Hearing / Notice of Status Conference

7

8 Adv. Pro. No. 19-01122 (JPM) Fairfield Sentry Ltd. (In
9 Liquidation), et al., v. Citco Global Custody NV, et al.

10 Notice of Agenda for Matters Scheduled for Hearing on May 3,
11 2024

12

13 Notice of Hearing on the Motion to Dismiss by The Citco
14 Group Limited, Citco Banking Corporation N.V., and Citco
15 Global Custody (N/A.) N.V. for Lack of Personal Jurisdiction
16 Under File 12(b) (2)

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25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

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18 BY: GREGORY F. LAUFER

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25

1 ALSO PRESENT:
2 KENNETH KRYS
3 JAIME B. LEGGETT
4 GREIG MITCHELL
5 HARRISON CHASE WEIDNER
6 KYLLAN GILMORE
7 MICHAEL C. LAMBERT
8 MARCELLA OLIVER
9 LEIF RAANES
10 NOWELL BAMBERGER
11 DANIEL ELKIND
12 ADRIAN GARIBOLDI
13 ABBIE GOTTER-NUGENT
14 THOMAS Q. LYNCH
15 NATE REYNOLDS
16 DAVID Z. SCHWARTZ
17 CAROLINE SOUSSLOFF

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1 P R O C E E D I N G S

2 CLERK: All rise.

3 THE COURT: Good morning. Please be seated. Good
4 morning, everyone. We are here on multiple cases related to
5 Fairfield Sentry. Can I have appearances for the record,
6 please?

7 MR. JONAS: Good morning, Your Honor. Jeff Jonas
8 from Brown Rudnik. With me are David Molton, Mark
9 Krzyzowski, Kyle Dorso on behalf of Ken Krys and Greg
10 Mitchell in their capacities as joint liquidators for
11 Fairfield Sentry, Fairfield Sigma, and Fairfield Lambda, the
12 plaintiffs in opposition to the motions to dismiss. Mr.
13 Krys and Mr. Mitchell are on the Zoom line today.

14 THE COURT: Good morning.

15 MR. JONAS: Thank you, Your Honor. Good morning.

16 MR. LAUFER: Good morning, Your Honor. Greg
17 Laufer from Paul, Weiss, Rifkind, Wharton & Garrison.
18 Daniel Negless from my firm is here as well. We represent
19 the Citco defendants.

20 THE COURT: Good morning.

21 MR. LAUFER: Good morning.

22 THE COURT: Let's have everyone appear first just
23 so we get the lay of the land.

24 MR. LAMBERT: Good morning, Your Honor. Michael
25 Lambert of Gilmartin Poster & Shafto. We represent

1 defendant, Private Space Limited in Adversary Proceeding 10-
2 03630.

3 THE COURT: Good morning.

4 MR. WEIDNER: Good morning, Your Honor. Chase
5 Weidner from Gibson Dunn & Crutcher. I'm joined by my
6 colleague, Marshall King, here on behalf of the UBS AG and
7 UBS Jersey Nominees Limited in 10-03636 and 10-03635.

8 THE COURT: Good morning.

9 MR. SHAIMAN: Good morning, Your Honor. David
10 Shaiman of Allegaert Berger & Vogel on behalf of Rothschild
11 & Co. Asset Management, formerly known as Rothschild & Cie
12 Gestion, as manager of the Elan Gestion Alternative Fund,
13 which was sued as Rothschild & Cie Banque-Ega. And that's
14 in Adversary Case Number 10-03627.

15 THE COURT: Good morning.

16 MR. SHAIMAN: Good morning.

17 MR. HALPER: Good morning, Your Honor. Rick
18 Halper with McKool Smith. I'm here with my colleague, Hal
19 Shimkoski. We represent bank Julius Baer in adversary
20 proceedings 10-03635 and 10-03636.

21 THE COURT: Good morning.

22 MR. HALPER: Good morning.

23 THE COURT: Anyone wishing to appear remotely?

24 MR. GILMORE: Yes. This is Kyle Gilmore of
25 Winston & Strawn LLP appearing on behalf of Altipro Master

1 Fund, sued as Altigefi-Altipro Master a/k/a Olympia Capital
2 Management. And my colleague Christopher Man is on the
3 telephone line.

4 THE COURT: Good morning. Okay, Counsel?

5 Before you start, actually, I wanted to just make
6 a point I made in the other cases. A lot of documents have
7 been filed under seal in the various cases. So I will give
8 the parties until Monday, May 6th to determine if there's
9 anything filed under seal that any party wants to withdraw
10 from the record because they don't want it to be cited,
11 quoted, or otherwise referred to in a potential opinion.
12 And if anything is not withdrawn, I will assume even
13 something filed under seal. The party recognizes that it
14 may be cited, quoted, otherwise referenced in an opinion.

15 So if there's anything anyone wants to not be
16 considered, just withdraw it from the record by Monday.
17 Otherwise, we'll proceed as I outlined.

18 MR. LAUFER: Very good. Thank you, Judge.

19 THE COURT: And that goes to all the cases,
20 obviously. Okay, thank you.

21 Please proceed, Counsel.

22 MR. LAUFER: Of course. So as I mentioned a
23 moment ago, I am Greg Laufer from Paul Weiss. We represent
24 certain Citco defendants. And in particular here we've made
25 a motion to dismiss on personal jurisdiction grounds with

1 respect to the Citco Group Limited, Citco Banking
2 Corporation N.V., and Citco Global Custody N.V. I will
3 refer to them collectively as either the Citco defendants or
4 the Citco moving defendants.

5 I am not going to be addressing at the podium
6 today the personal jurisdiction arguments that we've made
7 with respect to Citco Global Custody and Citco Banking
8 Corporation in light of Your Honor's decision in UBS Europe.
9 We obviously understand Your Honor's ruling in that case.
10 We reserve all rights with respect to that ruling.

11 Instead, I would like to focus our argument today
12 on the arguments we've made with respect to personal
13 jurisdiction as to the Citco Group. And I think I can be
14 relatively brief because we don't think there's really any
15 viable argument here that this Court can exercise personal
16 jurisdiction over Citco Group under the law of this circuit.

17 I know Your Honor is very aware of the facts of
18 this case. I just want to give a little bit of context to
19 the extent relevant to our motion.

20 So the Plaintiffs here of course are liquidators
21 appointed by a court in the BVI to represent the interests
22 of certain feeder funds that invested all or substantially
23 all of their assets with Madoff. And they brought these
24 adversary proceedings in an effort to recoup funds from
25 beneficial holders of investments in those feeders funds who

1 redeemed. They've sued certain Citco entities, among which
2 the Citco Banking and Citco Custody entities that I just
3 mentioned and that we also have personal jurisdiction
4 arguments with respect to. And they sued those entities
5 because those entities had clients that were beneficial
6 holders in the feeder funds. And those Citco entities were
7 the nominal holders of those beneficial holders' investments
8 in feeder funds.

9 Citco Group on the other hand is positioned quite
10 differently from those entities. And as I'll explain in a
11 moment and as set out in our papers including in the
12 declaration of Robert Voges, who is a Citco Group director,
13 Citco Group is just a Cayman-based holding company. It's
14 the indirect parent of the Citco Banking and Custody
15 entities that I just mentioned as well as dozens of other
16 Citco-related entities around the world that conduct all
17 sorts of business.

18 All of the liquidators' claims against our clients
19 have now been rejected except for one, which is a claim that
20 seeks to impose a constructive trust over proceeds sent to
21 redeeming investors in the feeder funds. So those are the
22 facts in basic terms.

23 So now let me turn to the personal jurisdiction
24 arguments with respect to Citco Group. As I said before,
25 the short of it is there is no personal jurisdiction with

1 respect to Citco Group and there are really two main points
2 that I want to make.

3 The first critical point is that the complaint
4 very clearly makes, and I don't think that my friends on the
5 other side dispute, blanket group pleading jurisdictional
6 allegations sometimes as to all defendants and sometimes as
7 to various Citco-related defendants together. And it tries
8 to collapse those distinct entities into one ball of wax.
9 That doesn't work under Second Circuit precedent.

10 As we cited in the Charles Schwab court case, 883
11 F.3d 68, the Second Circuit has been very clear that you
12 have to do this on a defendant-by-defendant basis.
13 Otherwise, it makes it, in the Second Circuit's words,
14 "impossible to determine", that's a quote, which allegations
15 apply to which defendant. And that's exactly what we have
16 going on here in the liquidator's second-amended complaint.
17 And I'll give the Court just a couple of examples.

18 If you look at Paragraph 19, there the liquidators
19 say that "Defendants purposely availed themselves of the
20 benefits of the New York forum." They go on in that
21 paragraph to say defendants selected U.S. dollars. They go
22 on still in paragraph 19 of the second-amended complaint to
23 say defendants derived significant revenue from New York.

24 I'll give you one more example. Paragraph 20 of
25 the second-amended complaint says this, "This court has

1 jurisdiction over the Defendants," big D, "by virtue of
2 agreements entered into by the funds and what the
3 liquidators call Citco record holders," which as I'll come
4 back to in a moment is defined to include certain nonparty
5 Citco entities but to exclude, as relevant here, Citco
6 Group.

7 I don't think that my friends on the other side
8 have disputed that characterization of their complaint, and
9 the complaint doesn't actually say anything at all
10 specifically about Citco group's contacts with the United
11 States as opposed to alleging that those contacts were with
12 a constellation of other Citco entities in a generic sense.
13 That does not work under governing law.

14 So now let me get to the second point I wanted to
15 make, which is this. Even if you put aside the group
16 pleading problem that the liquidators can't seem to get
17 around, the jurisdictional allegations are not sufficient.
18 And there are a few reasons for this. For one, the
19 complaint itself -- and I alluded to this a moment ago -- is
20 drafted in a way that explicitly excludes the Citco group
21 from its jurisdictional allegations. And I'll give you
22 again some examples.

23 If you look for instance at paragraph 39, the
24 second-amended complaint alleges there that what it refers
25 to as the Citco Record Holders, which are defined in the

1 second-amended complaint to exclude the Citco group,
2 "Purchased shares in and made redemptions from the funds for
3 the benefit of the beneficial shareholders."

4 And then if you look, just to give you another
5 example, Your Honor, at Paragraph 65 and 66 of the
6 complaint, it alleges there that, quote, the Citco Record
7 Holders, again, defined to exclude the Citgo group,
8 "Purchased shares in and made redemptions from the funds for
9 the benefit of the beneficial shareholders." And it goes on
10 to make similar allegations again referring only to the
11 Citco Record Holders, big C, big R, big H, but to exclude
12 Citco Group.

13 And beyond all of that, we've also submitted a
14 declaration from a Citco Group representative, a director
15 who I mentioned a few moments ago, Robert Voges. He has
16 testified in his declaration, with testimony by the way that
17 the liquidators have not even tried to impugn or challenge,
18 and he has explained the following. "The Citco Group is a
19 Cayman entity. It is a holding company. It has no business
20 operations of its own whatsoever. It has no employees of
21 its own whatsoever. It has never transacted business with
22 or provided services to the feeder funds or any of the
23 beneficial shareholders at issue in this litigation. It's
24 never transacted any business in the United States. It has
25 never maintained any operations or employees in the United

1 States. It doesn't actually have or do either of those
2 things. And it otherwise has never had any contact with the
3 feeder funds in this case. Again, the liquidators I don't
4 think have sought to or actually challenged any of that
5 testimony, which on its own shows that the Citco Group
6 doesn't have any nexus with this country. So that's alone
7 enough to show that there's no personal jurisdiction here
8 under any applicable standard.

9 So what do the liquidators do in the fact of all
10 these impediments? They've got a few arguments that are
11 either divorced from their actual allegations as set out in
12 their complaint, or legally wrong, or both. Let me give you
13 some examples.

14 The liquidators say that the Citco Group is
15 subject to jurisdiction by virtue of what they claim is a
16 pecuniary gain on specified undefined that Citco Group is
17 alleged to have gotten from its operating subsidiaries. And
18 for that proposition, which is unsupported by any evidence
19 by the way, they rely on this Court's decision from 2012 in
20 Picard v. Bureau of Labor. That argument doesn't work. For
21 starters, the complaint doesn't say anything about a
22 pecuniary gain that Citco Group is alleged to have gotten
23 from any operating subsidiaries. But putting that aside,
24 this whole issue of pecuniary gain and agency wasn't even
25 discussed in Picard and none of the other cases that the

1 liquidators cite supports their argument that revenue
2 indirectly, allegedly indirectly taken in by a parent
3 company through its subsidiaries is enough on its own to
4 show a principal-agent relationship for personal
5 jurisdiction purposes.

6 And on top of that, demonstrating what I just
7 said, we've actually cited caselaw showing that merely
8 alleging that the Citco Group may have indirectly gotten
9 revenue in the U.S. through entities isn't enough. And
10 again, I'm just assuming for present purposes that's true.
11 But there is nothing to credit here because they haven't put
12 anything in front of you for that proposition.

13 But we can point the Court for support to the
14 decision by the Southern District of New York in SPV Osus
15 Ltd. v. Unicredit Bank Austria, 2019 WL 1438163 (2019). And
16 that decision specifically held that the defendants had
17 "derived significant revenue" from the forum by facilitating
18 the transfer of funds into Madoff's account wasn't good
19 enough to make a personal jurisdiction showing. And again
20 here the liquidators don't even try to distinguish that
21 decision in any meaningful way, which we think is
22 dispositive.

23 The other thing that the liquidators have done or
24 attempted to do to try to get around this personal
25 jurisdiction obstacle is this. They claim in their

1 opposition brief that the Citco Group supposedly attended
2 all of just four meetings with Madoff representatives in New
3 York in the six-year period from May 2000 to May 2006. That
4 doesn't do the trick, either.

5 The very documents that the liquidators rely on to
6 show that that meeting or those meetings involve employees
7 of Citco Group actually show that they were employees of
8 Citco subsidiaries. As I mentioned, Mr. Voges has testified
9 in writing in testimony that has not been challenged and
10 that the liquidators in fact haven't even tried to
11 challenge, that the Citco Group doesn't have employees. It
12 only has a few directors. And what's more, those meetings
13 that the liquidators are so fixated on have nothing to do
14 with redemptions from the feeder funds or any other matter
15 relating to their EDI constructive trust claims. So it is
16 totally irrelevant for specific personal jurisdiction
17 purposes.

18 And just to put a finer point on it, even the one
19 meeting that was attempted by an individual named Ermanno
20 Unternaehrer, he was a director and executive committee
21 member at the Citco Group, he as the documents show attended
22 the one meeting that he is alleged to have attended in his
23 capacity as a representative of Citco Financial Services.
24 That is one of the many operating subsidiaries under the
25 Citco Group umbrella that provides hedge fund administration

1 services. And the objective and purpose of that meeting had
2 absolutely nothing to do with any of the issues in this
3 case. That meeting was about liabilities or extinguishing
4 liabilities to that hedge fund administration business. And
5 we have cited cases, including for the United States Supreme
6 Court, for the what I think is uncontroversial proposition
7 that officers and directors of a company can of course be
8 dual (indiscernible). They can have different roles. And
9 under the United States Supreme Court's decision in United
10 States v. Best Foods, there is a presumption that officers
11 and directors act for their subsidiaries, not the parent
12 company absent contrary evidence. And we've cited other
13 decisions to that effect on Page 17 of our reply brief. So
14 none of this smattering of emails changes anything.

15 In yet another attempt to beat back our motion,
16 the liquidators also try to impute their alleged
17 jurisdictional contacts of some of these Citco operating
18 entities to the Citco Group. And let me give you another
19 example. They say in Paragraph 39 of the second-amended
20 complaint that "at all relevant times all Citco
21 recordholders and the Citco banks were wholly owned
22 subsidiaries of Citco Group Limited and all the Citco
23 entities worked under the ultimate direction of the Citco
24 Group's executive committee." That argument does not work,
25 either. Because under Second Circuit caselaw that we've

1 cited, the liquidators would have to show in order to
2 support their imputation or agency theory that the relevant
3 subsidiaries, meaning Citco Banking and Custody, which I
4 mentioned earlier, were either agents or mere departments of
5 the Citco Group. That's the language from the caselaw. And
6 the liquidators have not even tried to meet that test here,
7 meaningfully tried. They argue instead that the Citco Group
8 and its subsidiaries acted as "an integrated company". And
9 I think as supposed support for that proposition, they have
10 taken some language from promotional materials that are
11 publicly available on websites. None of that is relevant in
12 the least. The Southern District of New York's decision in
13 Tese-Milner v. De Beers Centenary proves as much. That's
14 613 F.Supp.2d 404. It's a 2019 case. And that case
15 specifically said that the term "integrated enterprise" has
16 no legal meaning for personal jurisdiction purposes. And
17 the First Department of the Appellate Division said much the
18 same thing in Fimbank P.L.C. v. Woori Fin. Holdings Co., 104
19 A.D.3d 602 (2013). And we have other cases to that effect
20 cited in Footnote 13 on Page 15 of our reply brief.

21 And just to underscore that point once more, the
22 First Department of the Appellate Division in yet a
23 different case rejected practically identical allegations
24 concerning the Citco Group itself just a few years ago in
25 FIA Leveraged Fund Limited v. Grant Thornton LLP, 150 A.D.3d

1 492 (N.Y. App. Div. 2017). And again, the liquidators make
2 no attempt to distinguish that case or explain why its
3 reasoning doesn't apply with equal force here.

4 Almost finally, the other thing the liquidators do
5 is point to cases finding that in their view a subsidiary
6 acted as an agent of a foreign parent. And they have tried
7 to analogize those cases to the circumstances here. The
8 best example they can find though actually goes the other
9 way. That's the Hebrew University of Jerusalem case, 2023
10 WL 2667531 from this Court, decided just last year. As I
11 said, that case actually rejected the theory that's being
12 advanced by the liquidators here. And in that case, the
13 Court held that there was insufficient evidence of an agency
14 relationship between a foreign parent and operating
15 subsidiaries even though in that case there were far more
16 allegations of control than there are here. Here, there are
17 actually practically no allegations of control. And all of
18 the other cases, just to put a finer point on that subject,
19 all the other cases that the liquidators have cited for that
20 proposition involve situations where there was either a mere
21 complete identity between the principal and the agent or it
22 was clear from the evidence that the alleged agent was
23 acting under the control or for the benefit of the
24 principal. There is no allegation here or evidence to that
25 effect. And in fact, courts have dismissed claims on

1 personal jurisdiction grounds as to non-U.S. Citco parent
2 entities based on acts allegedly taken by their operating
3 subsidiaries. One example of that is a 2004 decision from
4 the Southern District, ATSI Communications v. Shaar Fund.
5 And that case granted a motion to dismiss on personal
6 jurisdiction grounds because -- and this is from the Court's
7 own reasoning -- the plaintiffs "conclusory allegation that
8 Citco controlled --" and I'm bracketing another non-U.S.
9 entity unbracket, was "tenuous". And again, the liquidators
10 have no response to this holding and don't try to
11 distinguish it.

12 So for all those reasons, Your Honor, personal
13 jurisdiction with respect to Citco Group is lacking. I
14 think that's enough to grant our motion. But we stand on
15 our papers with respect to the reasonableness test under the
16 Supreme Court's decision in Volkswagen. For all of the
17 reasons that we've set out here, it would obviously be
18 unreasonable to subject Citco Group under the constitution
19 to this Court's personal jurisdiction under these
20 circumstances. So we would ask for the motion to be
21 granted. Thank you.

22 THE COURT: Thank you, Counsel.

23 Would anyone like to be heard in response?

24 MR. JONAS: Yes, Your Honor. Good morning again,
25 Your Honor.

1 THE COURT: Good morning.

2 MR. JONAS: Jeff Jonas from Brown Rudnick for the
3 -- on behalf of Ken Krys and Greg Mitchell as joint
4 liquidators.

5 Your Honor, before getting to any specific
6 defendant, I think it would be useful to frame up just a few
7 things that are applicable to all of the defendants and
8 arguments today. And I'll just take a brief moment to do
9 that.

10 There have been significant briefings which I
11 incorporate and rely on. Of course early this year Your
12 Honor issued four memorandum opinions and orders denying the
13 motions to dismiss of defendants HSBC Security Services
14 Luxembourg S.A., HSBC Private Bank Suisse S.A., UBS Europe
15 S.E. Luxembourg Branch, and Merrill Lynch International.
16 Based on our limited time, I will try not to regurgitate
17 those opinions. But of course I incorporate and rely on
18 those for purposes of today's argument as well.

19 I will attempt to be succinct and to the point in
20 focusing the Court on what we believe to be a clear path to
21 denial of each and every of the remaining motions to dismiss
22 which are being heard today.

23 As I said the last time, Your Honor, fundamentally
24 the question before the Court today is the same as it was at
25 the earlier hearing; should sophisticated investors like the

1 defendants here which knowingly and purposely took advantage
2 of the U.S. financial markets and utilized the U.S. banking
3 system for profit be able to avoid any redress in the United
4 States? The easy and simple answer as already found by the
5 Court on multiple occasions is no. The ultimate merits of
6 the liquidators' claims are for another day. But we should
7 at least be able to prosecute them against these defendants.

8 In the end, as in all matters before this Court,
9 the Court's approach should consider benefits and burdens.
10 Should these defendants get the benefits they receive,
11 including taking advantage of the U.S. securities markets,
12 without the burdens, including now being subject to
13 jurisdiction to face possible recourse for their actions.
14 Again, the answer must be no.

15 Of course, in order for a court to have personal
16 jurisdiction, the defendant must have sufficient minimum
17 contacts with the United States that relate to the claims at
18 issue and exercise of jurisdiction must be reasonable.
19 Minimum contacts are found where a party has purposely
20 availed itself of the jurisdiction. And again to wrap up on
21 preliminaries, our burden is to make a factually supported
22 prima facie case showing of personal jurisdiction.

23 One more prelim, Your Honor. And I think this is
24 critically important. The highest court relevant to these
25 matters today has spoken in my opinion dispositively on the

1 issue before the Court today. In In re Bernard L. Madoff
2 Investment Services LLC, 2023 WL 395225 in January of 2023,
3 the district court for the Southern District of New York,
4 Judge Schofield in denying a defendant's motion for leave to
5 appeal, the bankruptcy court's denial of its motion to
6 dismiss for lack of personal jurisdiction stated as follows.

7 Defendant argues that the bankruptcy court erred
8 by stating that the trustee has alleged legally sufficient
9 allegations of jurisdiction simply by stating that Lombard
10 Odier knowingly directed funds to be invested with New York-
11 based BLMIS.

12 Contrary to that argument, the bankruptcy court
13 correctly held, applying settled precedent, that by
14 intentionally investing in the New York-based investment
15 fund, Defendant purposely availed itself of the privilege of
16 doing business in New York.

17 The trustee's instant suit is based on defendant's
18 investment of tens of millions of dollars in Fairfield
19 Sentry Limited with the specific goal of having funds
20 invested in BLMIS in New York with intent to profit
21 therefrom. Such investment was not haphazard. Rather,
22 defendant intentionally tossed a seed from abroad to take
23 root and grow as a tree in the Madoff money orchard in the
24 United States and reap the benefits therefrom.

25 Defendant has not pointed to any conflicting

1 authority that suggests a different conclusion. While
2 neither party has cited a previous Second Circuit case
3 addressing this precise fact pattern, the outcome is
4 dictated by straightforward application of Supreme Court
5 precedent.

6 Your Honor, of course this makes perfect sense, as
7 you've already found. When defendants seek to take
8 advantage of the U.S. securities market by investing in the
9 Madoff funds directly or indirectly, they should be subject
10 to personal jurisdiction in New York.

11 Although the district court has confirmed in my
12 opinion that all that is necessary for personal jurisdiction
13 here is to show a definitely intentionally invested in
14 Madoff, we'll do better than that, as we've done before.
15 Whether by showing defendants used or directed the use of
16 U.S. correspondent bank accounts, agreed to New York law and
17 New York courts governing their investments, or conducted
18 due diligence relating to Madoff, sometimes coming to New
19 York to do that.

20 No matter how much the Defendants try to hide
21 behind other parties and twist the facts and law, the
22 evidence -- and I'm going to focus on the evidence today,
23 Your Honor -- supporting personal jurisdiction is
24 overwhelming and each and every motion to dismiss should be
25 denied.

1 So let me turn to Citco, Your Honor. And, Your
2 Honor, I think it's important, notwithstanding that my
3 adversary's arguments were focused only on one of the Citco
4 entities, the nature of our arguments and the other motions
5 are live, of course. I think it's important to deal with
6 Citco in its entirety. And to do that, Your Honor, I would
7 like to hand up a page or a chart from our complaint.

8 If I may, Your Honor?

9 THE COURT: Of course. Thank you.

10 MR. JONAS: Your Honor, this is a chart from our
11 complaint. And I just want to really quickly take a look at
12 it because I think it helps orientate the Citco arguments.
13 Because Citco was deeply involved in the Fairfield funds and
14 Madoff including monitoring processing subscriptions and
15 redemptions, paying to or depositing in accounts of the
16 funds all monies and securities received on behalf of the
17 funds, establishing and maintaining a register of holders of
18 shares in the funds, issuing and cancelling share
19 certificates and calculating the net asset value of funds
20 shares on a monthly basis.

21 If you look at the chart, Your Honor, I won't
22 spent too much time on it, but you'll see on the left-hand
23 side are the entity names. You'll see a column that says
24 moving defendant. That is are we here today on a motion to
25 dismiss for any of these particular Citco entities. As

1 you'll see at the top, the Citco Group Limited where -- is
2 where counsel spent most of their time today. Yes, they are
3 a moving defendant. Citco Banking Corporation N.V., and
4 Citco Global Custody N.A.N.V. Yes, those also defendants
5 and have filed motions to dismiss.

6 However, I want to note, Your Honor, there are
7 additional Citco entities that are defendants that have not
8 contested jurisdiction. Those are Citco Bank Nederland,
9 Citco Bank Nederland N.V., the Dublin Branch, Citco Global
10 N.V., Citco Fund Services Europe B.V. Again, Citco entities
11 in the scheme here which I'll get to that have not sought to
12 have the cases dismissed back on lack of personal
13 jurisdiction.

14 The only other thing I would point out, Your
15 Honor, and then we can move on, is the column "Relationship
16 with the Fairfield Funds". You see at the top that Citco
17 Group Limited was the parent of all the Citco entities
18 below. Citco Banking Corporation was a subscriber of shares
19 of the funds in its nominee or agent, which I'll get to.
20 Citco Global Custody and then Citco Global Custody, an
21 actual subscriber of shares of the funds and our position as
22 agent for Citco Banking.

23 But again, Your Honor, I want to point out the
24 additional entities had many capacities relating to
25 Fairfield and effectively Madoff. There was Citco Bank

1 Nederland was the fund bank and custodian. Citco Bank
2 Nederland N.V., also fund bank and custodian. Citco Global
3 Custody, fund custodian and depository and also a subscriber
4 of shares, and Citco Fund Services, the fund administrator.

5 As you can see and will see, Your Honor, and as
6 the evidence supports, Citco, through its many entities top
7 to bottom was all over Fairfield and Madoff. Up, down, and
8 sideways.

9 First I would like to address Citco Global Custody
10 Curacao and Citco Bank Curacao, recipients of \$70 million in
11 improper redemptions.

12 Citco Global Custody was the agent and nominee of
13 Citco Bank. I won't always reference Curacao, but those are
14 the entities I'm referring to, Your Honor. This is
15 confirmed in the evidentiary record, including because Citco
16 Bank Curacao has confirmed in its own words, "Citco Global
17 Custody Curacao is a nominee organized under the laws of the
18 Netherlands Antilles and is operated and 100 percent owned
19 and controlled by Citco Bank Curacao. That's at Exhibit 4,
20 Your Honor. Sometimes I will -- today as I refer to
21 exhibits these are the numbered exhibits with respect to
22 each defendant. So you may hear some of the numbers more
23 than once, but that's how they correlate. So this is
24 Exhibit 4 with respect to Citco. I won't always give the
25 Bates pages, Your Honor. And if I do, there's different

1 names on the Bates pages. For example, this one is Citco
2 Redeemer, 02125117. I won't always do that. It's confusing
3 and it takes time. But our papers properly reflect that,
4 Your Honor.

5 Moreover, Your Honor, brokerage and custody
6 agreements entered into between Citco Bank Curacao, Citco
7 Global Custody Curacao, and beneficial shareholders,
8 customers for brokerage and custodial services with respect
9 to Fairfield Fund investments show not only that a principal
10 agent relationship existed between Citco Bank Curacao and
11 Citco Global Custody Curacao, but that Citco Bank Curacao
12 benefitted financially from the activities of Citco Global
13 Custody Curacao.

14 Citco Global Custody acted as recordholder for
15 Citco Bank's Fairfield investments. In other words, it
16 fronted for Citco Bank.

17 Article 3 of Citco Global Custody Curacao's
18 articles of association state that Citco Global Custody
19 Curacao's "Exclusive objective is to hold for the benefit of
20 clients of Citco Bank Curacao securities or rights regarding
21 securities." Exhibit 53.

22 Your Honor, my adversary mentioned Picard v.
23 Hebrew University of Jerusalem. He is right; the decision
24 was a finding that there was impersonal jurisdiction. I
25 would say on very different and much worse facts than we

1 have here. But the holding of the case I think is
2 instructive. In that case -- and that's Picard v. Hebrew
3 University of Jerusalem, WL 2667531 *7 (Bankr. S.D.N.Y. Mar.
4 28, 2023) -- Judge Morris found that, "To establish an
5 agency relationship for purposes of personal jurisdiction, a
6 plaintiff must show that the alleged agent act for the
7 benefit of and with the knowledge and consent of the non-
8 resident principal and over which that principal exercises
9 some control." I think we've more than done that in spaces,
10 Your Honor, with respect to the two Citco entities we're
11 dealing with. I haven't gotten to Citco Group Limited yet,
12 Your Honor, but I think we've already demonstrated just on
13 the record I've put forth.

14 She also found that what matters are the realities
15 of the relationship in question, not formal agency law. I
16 think it's also worth noting, Your Honor, In re EUR
17 Government Bonds Antitrust Litigation, 2020 WL 427381 *6,
18 another Southern District of New York case from 2020,
19 reconsideration denied at 2020 WL 7321056, which held that a
20 defendant that "Transacts financial instruments in a forum
21 has purposely availed itself of the forum and may thus be
22 subject to personal jurisdiction for claims arising from
23 those transactions --" here's the best part, Your Honor, "--
24 even when the defendant does so indirectly by effecting
25 those transactions through their agent."

1 Your Honor, in our papers we've cited some other
2 examples where courts have found this types of relationship
3 and imputed the agent's conduct and contacts to the
4 principal. I won't cite those here, but they are in our
5 papers.

6 I would cite, Your Honor -- and it's my last cite
7 on this topic, but I think it's important. I would cite,
8 because it's very much on point, the Spetner v. Palestine
9 Inv. Bank, 70 F.4th 632 (2d Cir. 2023), a case which you
10 cited in your earlier opinions so I know you're familiar
11 with it. And the Second Circuit Court of Appeals found that
12 "A foreign bank's choice to project itself into New York can
13 be evident through the selection of repeated use of an
14 agent's correspondent account in the forum." This result
15 follows from two strands of well-established jurisprudence.
16 Foreign entity can be subject to suit in New York based on
17 the acts of its agent and sustained use of correspondent
18 banking account constitutes transacting business.

19 The quote went on to say that agency within the
20 meaning, in that case 302(a)(A), is given a broad
21 interpretation. A plaintiff does not need to establish a
22 formal agency relationship in order to attribute the actions
23 of the agent to the principal. To exercise personal
24 jurisdiction over a defendant based on the acts of an agent,
25 a showing must be made the alleged agent acted in New York

1 for the benefit of with the knowledge and consent and under
2 some control of the non-resident principal.

3 Your Honor, this is going to come up in each of
4 the arguments today because many of these defendants did not
5 hold Fairfield shares in their own name. They used a front.
6 In this case, Citco Bank used Citco Global Custody. In
7 other cases, you'll see there were different fronts. And it
8 can't be the case, it can't be the law, Your Honor, that
9 when an entity simply -- an entity takes an agent and the
10 only -- as I've just gone through with this case, the only
11 purpose of the agent is to hold and do the bidding of the
12 principal, that it can then stand up and say, oh, we've got
13 nothing to do with the jurisdiction, that was somebody else,
14 we don't know who they are. It's silly, Your Honor. And
15 that's going to come up repeatedly. I won't make these
16 arguments over and over again, which is why I thought it was
17 important to do it at the outset and save ourselves some
18 time later.

19 So let's turn to this case and the particulars.
20 Here, Citco Global Custody Curacao signed subscription
21 agreements incorporating a private placement memorandum,
22 PPMs as you know, which as we've seen before made it clear
23 that substantially all of the Fairfield Funds assets were
24 investments in New York-based Bernard L. Madoff Investment
25 Securities LLC, or as I'll refer to it and we have referred

1 to it, BLMIS. Again, what does it mean? They knew they
2 were investing in the U.S. securities markets. That's at
3 Exhibit 1, Exhibit 4, Exhibit 19, Exhibit 20, Exhibit 21,
4 Exhibit 22, and Exhibit 23.

5 Citco Bank Curacao and Citco Global Custody
6 Curacao intentionally invested in Madoff, a New York-based
7 investment fund. They purposely availed themselves of the
8 privilege of doing business in New York. Moreover, as
9 detailed in our papers and the evidentiary record, both
10 Citco Bank and Citco Global Custody officers and directors
11 directly and repeatedly were involved with Fairfield and
12 Madoff including having concerns about verifying Madoff
13 assets. Here's just two examples.

14 The managing directors of each of the Citco banks
15 -- this is the Citco bank itself, Your Honor -- including
16 Citco Bank Curacao participated in orderly senior banker
17 meetings. And I'll also -- some of the exhibits are
18 deposition transcript. That's Exhibit 5 at 99:10.

19 And the meeting on July 11th, 2001, the Citco
20 banks discussed "Madoff Fairfield Sentry custody", including
21 a discussion about "A visit is to be planned to Madoff for
22 an independent verification." That's Exhibit 28.

23 Second, Your Honor -- and there are many, many
24 examples we put into the record, and I don't want to belabor
25 it. I'm just going to make one more. There are numerous

1 emails throughout 2000, 2001, 2002, including to Citco Bank
2 Curacao managing directors regarding due diligence of
3 Madoff, which included meeting in New York with Bernie
4 Madoff himself.

5 One such email to a Citco Bank Curacao managing
6 direct stated, "The objective of increasing Citco's comfort
7 level with respect to the existence of the assets in
8 relation to our responsibilities as custodian was not
9 achieved." That's back in 2000, Your Honor. That's Exhibit
10 39.

11 Citco Bank Curacao and Citco Global Custody
12 Curacao voluntarily chose to designate U.S. correspondent
13 accounts at Citibank and HSBC Bank to receive the redemption
14 payments from Sentry at issue here. Again, Exhibit 1,
15 Exhibit 4, Exhibit 40, Exhibit 41. Also see Exhibits 45
16 through 49.

17 They also used Sentry's U.S. correspondent bank
18 accounts as the destination of their subscription payments.
19 There were 71 subscription payments to Sentry's U.S.
20 correspondent bank at HSBC totaling more than \$100 million.
21 That's Exhibits 15 through 17, 18-1 and 18-2. They also
22 directed Sentry to send redemption payments to their U.S.
23 correspondent accounts at Citibank or HSBC 77 times totaling
24 approximately \$70 million. Again, Exhibits 45 through 49.
25 It's compilations of the redemption transactional documents.

1 Citco Bank Curacao received a fee from its clients
2 for each subscription and redemption transaction. The
3 subscription agreement signed by Citco Bank Curacao and
4 Citco Global Custody Curacao include provisions, as you've
5 seen before, designating governance of New York law and
6 submission to New York courts as the venue for dispute
7 resolution.

8 Citco Bank Curacao and Citco Global Custody
9 Curacao also communicated with Fairfield's manager, FGG, in
10 New York about Senty subscriptions, investor information and
11 relations, and account administration as evidenced by
12 Exhibits 54 through 58.

13 Citco Bank Curacao and its agent, Citco Global
14 Custody Curacao, intentionally invested in Madoff to take
15 advantage of the U.S. securities market. They used U.S.
16 correspondent bank accounts repeatedly. They did extensive
17 diligence, including meeting with Bernie Madoff. Their
18 motions to dismiss should be denied.

19 Just one minute, Your Honor?

20 THE COURT: Please.

21 MR. JONAS: I apologize, Your Honor. Going so
22 fast here that -- the chart is actually from our
23 oppositions, not the complaint.

24 THE COURT: No problem.

25 MR. JONAS: I just want to make that clear.

1 THE COURT: Thank you.

2 MR. JONAS: Okay, Your Honor. With that as a
3 backdrop, and I do think it's a critically important
4 backdrop, let's turn to Citco -- I would like to turn to
5 Citco Group Limited.

6 The liquidator's claims against Citco Group
7 Limited are somewhat different than the direct constructive
8 trust redemption claims which make up most of this
9 litigation. The liquidators assert that Citco Group Limited
10 is liable on \$1.7 billion of constructive trust claims on
11 straightforward agency liability because it directed the
12 Citco banks and Citco-registered holders as agents.

13 Citco Group Limited is liable as principal for
14 those agents' liability-creating acts. Of course, Your
15 Honor, the merits of these claims are not before the court
16 today. Rather, all we need to do today is demonstrate a
17 prima facie case that the Court has personal jurisdiction
18 over Citco Group Limited.

19 We believe we have put forth more than sufficient
20 evidence of Citco Group Limited's direct purposeful
21 availment to do this as I will describe momentarily. But
22 we also believe that we have shown there is personal
23 jurisdiction over Citco Group Limited because the conduct of
24 its agents, including its subsidiaries, Citco Bank Curacao,
25 Citco Global Custody Curacao as I described a few minutes

1 ago can be imputed to it.

2 One or the other, or taken together, the Court
3 should deny this motion so that we can get to the merits of
4 our \$1.7 billion claims against Citco Group Limited.

5 With respect to Citco Group Limited, the question
6 is can an entity control, manage, and operate through other
7 entities and benefit therefrom but then when a party seeks
8 redress for harm allegedly caused by that group of entities
9 can Citco Group, like the three wise monkeys, cover their
10 eyes, ears, and mouths and see nothing, hear nothing, and
11 say nothing.

12 In fact, you heard already, Your Honor, from
13 counsel, oh, we barely exist. We don't do anything. We
14 don't have operations. You'll see that's not quite true,
15 Your Honor, when I get to the evidence. But that's
16 ridiculous on its face. Common sense dictates that that
17 can't be the case. Citco Group Limited can't now hide from
18 its years of involvement with Fairfield and Madoff.

19 This Court has personal jurisdiction over Citco
20 Limited, as I said, on two bases. First, because its
21 subsidiaries acted as its agent. And if there is personal
22 jurisdiction over those subsidiaries, which I think I've
23 demonstrated, then there is personal jurisdiction over the
24 parent. Second, there is personal jurisdiction over Citco
25 Group Limited because of its own direct conduct.

1 I would like to review a few key facts which are
2 supported by the evidence we've put in the record, and it's
3 described in our papers. It's voluminous, Your Honor. I
4 couldn't do it in the time allotted, but I'll try and focus
5 on the highlights, but I urge you to go back and take
6 another look at our opposition where it's all laid out. And
7 we filed two separate oppositions, Your Honor, much like my
8 argument today. One with respect to the redemption
9 defendants, if you will, and a separate opposition with
10 respect to Citco Group Limited.

11 Your Honor, the Citco Group subsidiaries
12 constituted different divisions operated as an integrated
13 company ultimately controlled by Citco Group through the
14 Citco Group Executive Committee. It's at Exhibit 17, Your
15 Honor, where it says, quote, the Executive Committee -- and
16 that's (indiscernible) Citco Group, "The Executive Committee
17 is responsible for the daily management of the Citco Group
18 of companies." And further noting, "Citco banking division
19 directors". You can also see that at Exhibit 22 and Exhibit
20 23 and 20.

21 In its own audit reports, the Citco Group
22 describes itself as a "organization of financial service
23 providers comprised of international banks, trust and fund
24 companies". Exhibit 17. The same audit report also states,
25 "The Citco Group executive committee is responsible for the

1 daily management of the Citco Group of companies." I want
2 to make that clear. That's Exhibit 17 at Citco Redeemer
3 00810062.

4 That same exhibit, "The members of the executive
5 committee", that's referring to the Citco Group executive
6 committee, "together with division directors form the
7 management team of the Citco Group of companies." They're
8 saying the executive committee is the management team of the
9 group of companies. This management structure was confirmed
10 by multiple Citco witnesses in their deposition, Exhibits 21
11 and 20.

12 The members of the Citco Group executive committee
13 from approximately 2003 to 2008 included a Mr. Smeets, S-M-
14 E-E-T-S, as CEO of Citco Group and Ermanno Unternaehrer --
15 my apologies for pronunciation. That's supported in Exhibit
16 20 and Exhibit 21. Mr. Smeets and Mr. Unternaehrer. You'll
17 see why that becomes important.

18 The Citco Group Executive Committee appointed
19 directors to oversee the operations of each of the
20 divisions, including the Citco Fund Services Division and
21 the Citco Banking Division, which included Citco Bank
22 Curacao and Citco Bank Netherlands. And these directors
23 acted on behalf of and reported directly to the Citco Group
24 executive committee. That's at Exhibit 24, stating that the
25 division manager's report to the Citco Group Executive

1 Committee, also at Exhibit 22, stating that the Citco Fund
2 Services Division companies report to Mr. Keunen in his
3 capacity as the director of Citco Fund Services Division,
4 and he reports to the Citco Group Executive Committee.
5 Again, Exhibits 20, 21, 24.

6 Mr. Smeets, CEO of Citco Group, testified at
7 deposition that the Citco Group board of directors was
8 responsible for the strategic management of the business of
9 the Citco companies and for evaluating and issuing policies
10 and overall control and oversight of the Citco companies.
11 Exhibit 23.

12 The critical audit function across all the Citco
13 companies was led and controlled at Citco Group Limited.
14 Mr. Smeets, CEO of Citco Group Limited, testified, "There is
15 an internal auditor in the Citco Group Limited who leads the
16 internal audit groups at the various divisions and
17 companies." That person by the way, Your Honor, as he
18 notes, was Mr. Bodewes, B-O-D-E-W-E-S. And that's at Mr.
19 Smeets' deposition, which is at Exhibit 23, at Page 24 Lines
20 10 through 23.

21 Citco Group Limited itself participated in New
22 York indirect meetings relating to Madoff. In fact, Mr.
23 Smeets, CEO of Citco Group Limited, directed personnel,
24 including personnel based in New York, to meet with Madoff.
25 That's evidenced at Exhibit 29 and also Mr. Smeets'

1 deposition at Exhibit 23, Pages 116, Line 10 through 23,
2 Page 117, Line 5, and Page 324, Lines 9 through 14.

3 In the spring of 2001, Mr. Meijer, M-E-I-J-E-R,
4 who was head of internal audit for Citco Fund Services,
5 emailed Mr. Bodewes, B-O-D-E-W-E-S, at Citco Group Limited
6 to address the lack of verification of Citco Global
7 Custody's position with BLMIS. That's Exhibit 32.

8 Following that meeting, in January of 2002, Mr.
9 Meijer continued to express concerns to Citco Group Limited,
10 including the need for a legal contingency plan in the event
11 that BLMIS turned into a "financial disaster". That's at
12 Exhibit 33.

13 For example -- and I'm almost done, Your Honor.
14 And there's a lot more in the record. But I wanted to make
15 sure I put forth enough directly in the record today to make
16 my case.

17 For example, in September 2004, Mr. Unternaehrer,
18 a Citco Group Limited director and a Citco Group executive
19 committee member, attended a meeting in New York with Mr.
20 Keunen and Mr. Boele, B-O-E-L-E, of Fairfiled's manager,
21 FGG. That's at Exhibits 37, also 38 and 20.

22 Following that meeting, Mr. Unternaehrer sent a
23 report to the Citco Group Executive Committee as well as
24 other management team members in dictating Citco Group's
25 concern with the Madoff funds. That's Exhibit 37 again.

1 Your Honor, I know one of the arguments I heard
2 this morning was, well, those people wear different hats.
3 And I think they actually talked about Mr. Unternaehrer, I
4 may be wrong, and they said, well, he was somehow an
5 employee of Funds Services. So, yes, he may have been a
6 director and on the executive committee of Citco Group
7 Limited, but whatever he was doing in New York, he must have
8 shut off his Citco Group Limited brain and he was only
9 acting for Funds Services.

10 Your Honor, that's contradicted directly because
11 in Mr. Unternaehrer's deposition, Exhibit 20 at 83:17
12 through 84, he said that he had no obligations or duties
13 with regard to Citco Fund Services, he was never involved
14 with day-to-day operation with Citco Fund Services, and he
15 had no responsibility or oversight of the administration of
16 Citco Fund Services.

17 So again, Your Honor, I think we've demonstrated
18 numerous times we have a Citco Group Limited director,
19 executive committee members involved in the minutiae, if you
20 will, of the Madoff investment and everything that Citco was
21 doing up and down the chain.

22 Your Honor, the foregoing as well as the many
23 other facts supported by the evidence in the record before
24 the Court demonstrates Citco Group Limited's direct
25 involvement with Fairfield and Madoff. It is inconceivable

1 that Citco Group Limited can believe that it's contacts with
2 Madoff and New York were random, fortuitous, and attenuated
3 such that it should have to face the music in New York. But
4 even if you don't agree, Your Honor, there is no question
5 that the subsidiary Citco entities were acting for the
6 benefit of and with the knowledge and consent of the
7 principal, Citco Group Limited and over which Citco Group
8 Limited clearly exercised some control.

9 In fact, it looks like these entities acted at the
10 direction of Citco Group Limited from the record I
11 described.

12 Your Honor, for all of the foregoing reasons,
13 whether it's based on Citco Group Limited's direct contacts
14 with Madoff and New York, or whether it's based on a finding
15 that its many subsidiaries, who I think we've overwhelmingly
16 demonstrated we have personal jurisdiction over, whether
17 it's based on imputation or its subsidiaries as agents,
18 either way, Your Honor, Citco Group Limited's motion to
19 dismiss should be denied. Thank you, Your Honor.

20 THE COURT: Thank you, Counsel.

21 MR. LAUFER: May I, Your Honor?

22 THE COURT: Yes, please.

23 MR. LAUFER: Thank you, Judge. Again, Greg Laufer
24 from Paul Weiss for the Citco defendants.

25 As I said earlier, we will stand on our papers

1 with respect to the Citco banking and custody entities. But
2 for the reasons I described earlier, we won't be making
3 those arguments at oral argument right now.

4 The recitation we just heard was very interesting,
5 but I'm not sure what it has to do with the Citco Group. In
6 the very beginning of my friend's remarks, he said that he
7 was going to show you evidence of U.S. correspondent banks
8 and New York choice of law agreements and due diligence that
9 was conducted in the U.S. There is absolutely no evidence
10 and I don't even think an allegation that Citco Group had
11 any U.S. correspondent bank, that Citco Group entered into
12 any agreements relevant to this case that had any choice of
13 law provisions directing litigation either in New York or
14 elsewhere and that Citco Group entered into any agreements
15 at all or that Citco Group itself conducted any due
16 diligence with respect to the Fairfield funds and/or Madoff.

17 I also want to point out that the liquidators had
18 ample opportunity to conduct jurisdictional discovery. They
19 are very competent, capable lawyers with resources at their
20 disposal. And instead of doing that, they have given you
21 mischaracterized snippets of a couple of emails and some
22 testimony from depositions taken years ago in a different
23 matter. But since they raised it specifically, I did raise
24 those emails earlier, so let me address them head-on.

25 They say that a May 2000 Madoff diligence meeting

1 was "orchestrated by the CEO" of the Citco Group, Mr.
2 Smeets, who credited another individual, Mr. VanZanten, to
3 go to New York to meet with Madoff, and the meeting directly
4 related to the fund investments. And they cite to Exhibit
5 29. Actually if you look at Exhibit 23, Mr. Smeets
6 clarified that Mr. VanZanten was acting for Citco Fund
7 Services. Again, that was the hedge fund administration
8 operating subsidiary. And the testimony there is very clear
9 on its face at Pages 116, Line 17 to Page 117, Line 5.

10 The liquidators also say that Citco Group was
11 directly involved in the December 2002 meeting because in
12 their view Mr. Van Nijen, that's another Citco person, he
13 sent a report -- he was not a Citco Group person, by the
14 way. But he sent a report to another individual, Mr.
15 Bodewes, at Citco Group, and that Mr. Bodewes then
16 circulated that report to the Citco Group Executive
17 Committee and that Mr. Smeets testified again in an
18 unrelated action that the objective of the meeting was --
19 included communications and concerns to Madoff about the
20 existence of the fund's assets.

21 Actually, Mr. Van Nijen was a member of Citco Fund
22 Services' audit department, as I think we just heard
23 confirmation of. He was not an employee of the Citco Group
24 and his direct report, Mr. Meijer, who we also just heard
25 about, also was not a Citco Group employee and wasn't acting

1 at its direction. And in fact, they also concede that it
2 was Citco Fund Services, not Citco Group, that sent Mr. Van
3 Nijen to meet with Madoff representatives.

4 The liquidators also point to a May 2006 diligence
5 meeting when a Citco Fund Services managing director,
6 William Keunen, who we also just heard about, reported his
7 findings to the executive committee at the Citco Group and
8 he sought approval of the committee about next steps.

9 Mr. Keunen, as I just said, was a Citco Fund
10 Services director. He was not a Citco Group director or
11 employee and the liquidator's own description of that
12 meeting from May 2006 specifically notes that it relates to
13 custodial services that were being provided by Citco Fund
14 Services. That has nothing to do with this case. And then
15 finally they argue that in September of 2004, the executive
16 committee at Citco Group, Mr. Unternaehrer, on its behalf
17 went to New York to meet with Fairfield about the feeder
18 funds and the supposed concerns about Madoff. But Mr.
19 Unternaehrer was not a -- and they also say, sorry, that Mr.
20 Unternaehrer was not a CFS, that's Citco Fund Services,
21 employee and had no obligations or duties to that entity
22 except in his capacity as a member of the Citco Group
23 Executive Committee. That's actually untrue, as we
24 explained in our reply at Page 17. The meeting at issue
25 from September of 2004 concerned discussions between Citco

1 Fund Services, Citco Bank Nederland, and Fairfield, not the
2 Citco Group. And it's main purpose, this is a quote, was to
3 "take away possible liabilities while maintaining Citco Fund
4 Services' business", confirming that Mr. Unternaehrer was
5 there in his capacity as a representative of Citco Fund
6 Services. And my friend can poke fun at the dual-habit
7 nature of executives, but that happens all the time in the
8 United States and elsewhere, and there is caselaw to that
9 effect that we've cited, including for the United States
10 Supreme Court that, again, my friend on the other side did
11 not try to challenge.

12 Let me make just one more point. I think that
13 there was a suggestion that somehow it would be ridiculous
14 or absurd for a parent company or a holding company to cloak
15 itself in a personal jurisdiction argument or hide from the
16 United States, or whatever the characterization was.
17 There's nothing absurd or ridiculous about what is being
18 described there and there's nothing nefarious about it.
19 Holding companies based abroad and parent companies based
20 abroad, just like holding companies and parent companies in
21 the United States that have operating subsidiaries abroad,
22 frequently act and structure themselves in that way. And if
23 what the liquidators are saying is true, the mere fact that
24 there's a holding company with an executive committee that
25 ultimately has indirect control over what could be hundreds

1 of subsidiaries around the globe, that would essentially
2 mean that any holding company or any parent company is
3 subject to this country's jurisdiction or this Court's
4 jurisdiction any time it has any subsidiary, no matter what
5 it's doing, that has some nexus in the state or in this
6 country. That is obviously not the law. They haven't cited
7 a single case to that effect.

8 And as I said, they had an opportunity to take
9 jurisdictional discovery. And we heard lots of salacious
10 references to emails and testimony from other matters about
11 Citco's alleged conduct. The fact of the matter is the
12 liquidators had a burden of demonstrating a principal agency
13 relationship and control with respect to the issues in this
14 case and/or they had an obligation to show evidence or to go
15 out and find the evidence and then bring it to this Court's
16 attention showing that the activities of any Citco operating
17 subs that had activities here that are relevant to this case
18 could actually factually and legally be imputed to Citco
19 Group. They didn't do so. That was their choice. They are
20 now stuck with it.

21 Citco Group is not subject to this Court's
22 personal jurisdiction and it should be dismissed from this
23 case. Thank you, Judge.

24 THE COURT: Thank you, Counsel.

25 MR. JONAS: Briefly if I may, Your Honor. Jeff

1 Jonas from Brown Rudnik for the liquidators, Your Honor.

2 Your Honor, let's think about why we are here
3 today. I certainly appreciate arguments. They love the
4 knockout punch. It's a \$1.7 billion of claims. They love
5 to never have to face the music at all. And I think those
6 are what most of the arguments go to, that we haven't proven
7 our case of principal agency, et cetera. It's not a burden.
8 Today our burden is to show prima facie case with respect to
9 personal jurisdiction. I think we've done that. I think
10 we've done it overwhelmingly.

11 You know, maybe we've not yet proven an actual
12 principal agency relationship that's ultimately going to
13 mean they are liable for \$1.7 billion of claims. We think
14 we'll be able to do that someday, Your Honor. That's why we
15 want to get to the merits. But I don't think we have to
16 prove that today. I think we've demonstrated more than
17 enough on this record for the motion to dismiss to be
18 denied.

19 And, Your Honor, one of my favorite -- I don't
20 remember the name of the cases I stand on. I think it was a
21 Posner decision. It's an old bankruptcy court case I cite
22 many, many times. Something to the effect of that when a
23 judge in his gut knows something doesn't smell right, I
24 think it was in relation to bad faith, then the judge should
25 make a finding of bad faith. I'm not suggesting bad faith

1 here, Your Honor. But what I am suggesting is and when I
2 say it's ridiculous, listen to the arguments. They're
3 dancing on the head of the pin. Oh yeah, the Citco Group
4 Limited guy was there, but he was there wearing a different
5 hat. He reported back up to the executive committee, but it
6 was from some other entity. It -- to me that's ridiculous,
7 Your Honor. I think the record is replete that Citco Group
8 Limited was involved in the intricacies of the Madoff and
9 Fairfield relationships. They say they don't even really
10 exist because they don't operate. We've shown numerous --
11 the CEO, numerous employees, numerous executive directors,
12 executive committee members. They're all over this. To me,
13 Your Honor, that's proving the prima facie case on their
14 direct involvement, their direct involvement, never mind the
15 agency relationship. And again, it's twofold, Your Honor.
16 I think we've met both.

17 Real quickly, Your Honor, I just realized I did
18 not respond to one of the arguments. I want to make sure I
19 just put it to bed. The complaint group pleading argument.
20 I didn't spend much time on it because I don't think it's
21 worthy of it. But I would just say, Your Honor, we cite to
22 Vasquez v. H.K. & Shanghai Banking Corp., 477 F. Supp. 3d
23 241 (S.D.N.Y. 2020). This case is in a very different
24 posture. We're not limited to the allegations in the
25 complaint when we do -- when there has been jurisdictional

1 discovery.

2 In any event, Your Honor, I think I've made my
3 arguments and we believe quite strongly that we should be
4 able to proceed to the merits of our \$1.7 billion claims
5 against Citco Group Limited and this motion should be denied
6 as to all the Citco defendants. Thank you, Your Honor.

7 THE COURT: Thank you, Counsel.

8 Okay. Which matter are we proceeding to next?

9 MR. LAUFER: Thank you, Judge.

10 THE COURT: Thank you, Counsel.

11 MR. LAUFER: May we...

12 THE COURT: Yes, please. Are we going in the
13 order of the agenda?

14 MR. JONAS: Yes, Your Honor. I'm a little
15 outnumbered today, but I'll do the best I can.

16 THE COURT: No problem.

17 MR. LAMBERT: Shall I proceed?

18 THE COURT: Please, good morning.

19 MR. LAMBERT: Good morning again, Your Honor.

20 Michael Lambert of Gilmartin Poster & Shafto LLP for
21 defendant, Private Space Limited in Adversary Proceeding 10-
22 03630.

23 My client, Private Space, has moved to dismiss for
24 lack of personal jurisdiction. Private Space was a
25 beneficial shareholder with the two BVI funds, Sentry and

1 Sigma, and itself was also a BVI corporation. Its shares
2 were registered in the name of PSL's co-defendant, HSBC
3 Security Services Luxembourg S.A., which I will refer to as
4 HSSL pursuant to a custodian agreement between Private Space
5 and HSSL. Under that agreement, which is in the record as
6 Exhibit 6 to the Moulton Declaration submitted by
7 liquidators. In opposition to Private Space's motion,
8 that's Docket 327, HSSL acted on investments and redemption
9 directions from Private Space including Private Space's 2007
10 instructions to HSSL to redeem its positions in both Sentry
11 and Sigma.

12 HSSL's role was execution only. And HSSL was not
13 engaged to and never did provide any investment advice to
14 Private Space. It played no role whatsoever in Private
15 Space's decision-making processes. The evidence in that
16 regard is undisputed. See in particular Private Space's
17 sworn answers to the liquidator's interrogatories 7 and 12,
18 which are attached as Exhibit 1 to the reply declaration of
19 Lucio Bergamasco, which is Docket 338.

20 Those interrogatory answers are fully corroborated
21 by the (indiscernible) Quintus declaration submitted by HSSL
22 in support of its own motion to dismiss. That's Docket 281.

23 In a memorandum opinion and order dated January
24 29th of this year, Docket 349, Your Honor has already ruled
25 that HSSL is subject to personal jurisdiction and denied

1 HSSL's motion to dismiss for lack of personal jurisdiction.

2 Nevertheless, Private Space's own motion to
3 dismiss should I respectfully submit be treated differently
4 and be granted. And the reasons are as follows.

5 One, Private Space has never had any U.S. contacts
6 and presence such as a place of business, telephone listing,
7 or bank account. Assertions to that effect in the original
8 2021 declaration of Lucio Bergamasco in support of Private
9 Space's motion to dismiss, that's Docket 203, are completely
10 un rebutted and unchallenged by the liquidators despite two
11 years of expensive and voluminous jurisdictional discovery.

12 Two, evidence in the record show that Private
13 Space's contacts with Fairfield were with Fairfield
14 representatives whose business cards show addresses located
15 outside the United States, namely London, Switzerland, and
16 Bermuda. The reference there is again to the reply
17 Bergamasco declaration, Exhibits 2 to 5 and Paragraphs 6 to
18 10. That evidence also is un rebutted by the liquidators.

19 Third, evidence in the record also shows that
20 Private Space had no meetings with any Fairfield
21 representatives in the United States. All such meetings
22 were at locations in Europe. The reference there is
23 Bergamasco Reply Declaration, Paragraphs 7 and 12. That
24 evidence of no New York meetings or U.S. meetings is again
25 also not in dispute.

1 Fourth, evidence in the record also shows that
2 most emails sent to Private Space or its Monaco-based
3 investment advisory firm, Fedesa, from Fairfield
4 representatives were sent from the U.K. or Switzerland.

5 While there is evidence in the record that Private
6 Space did receive some Fairfield emails from an FGG.us
7 account, those emails all clearly came from a Fairfield
8 representative, that's Yanko Della Schiava, who was based in
9 Switzerland.

10 Fifth, Private Space not only never met with
11 Madoff of BLMIS in the United States as set forth in the
12 original Bergamasco declaration from 2021, but also never
13 communicated at all with Madoff or any other BLMIS
14 representative. Private Space's sworn answer to the
15 Liquidator's Interrogatory 13 to that effect is also
16 undisputed. That's Exhibit 1 to the reply Bergamasco
17 declaration.

18 Now, it would appear that HSSL or affiliates of
19 HSSL did have meetings with Madoff representatives in the
20 United States, contacts that Your Honor cites to in the
21 decision denying HSSL's motion to dismiss. I am referring
22 specifically to Pages 25 and 26 of the slip opinion, Docket
23 349.

24 As I've already noted, however, under its
25 custodian agreement with Private Space, HSSL's role was a

1 purely ministerial one that was limited to acting on Private
2 Space's instructions. And again, it is undisputed that HSSL
3 never gave any investment advice to Private Space such as
4 warning Private Space about any perceived problems with the
5 Madoff operation based on whatever Madoff or BLMIS due
6 diligence HSBC entities might have done while acting in
7 other capacities.

8 Under basic principles of agency law discussed on
9 Pages 12 to 15 of Private Space's reply brief in support of
10 the motion, Docket 337, therefore any such contacts between
11 HSBC entities and BLMIS in New York cannot be attributable
12 to Private Space in order to establish jurisdiction over
13 Private Space as they were not within the scope of HSSL's
14 very limited agency as Private Space's custodian.

15 Based on Mr. Jonas' account in his previous
16 argument involving the Citco defendants about what it takes
17 to establish an agency for jurisdictional purposes, i.e. the
18 benefit, the knowledge, and the control test, it would
19 appear that the liquidators agree.

20 In addition, there is zero evidence in the record
21 that Private Space ever knew about those contacts. I'm
22 talking about the contacts that HSBC representatives had
23 with Madoff in New York and that those contacts were
24 undertaken for the benefit of and/or with the consent of
25 private space, that private space had any semblance of

1 control over those contacts, or that HSSL ever passed on to
2 Private Space any information or concerns about BLMIS
3 generated by those contacts.

4 In fact, there are not even any allegations in the
5 fourth-amended complaint, which is Docket 167, of any actual
6 knowledge by Private Space of the Madoff fraud or that HSSL
7 ever conveyed any such knowledge or concerns to Private
8 Space or that Private Space had any knowledge of or anything
9 to do with any BLMIS due diligence that any HSBC entity
10 conducted in New York.

11 The only allegations in the fourth-amended
12 complaint concerning Private Space's knowledge of the Madoff
13 fraud are in Paragraphs 130 to 136. Those allegations,
14 however, are generalized, conclusory group pleading ones
15 that solely because HSSL subscribed to shares in the funds
16 on behalf of beneficial shareholders, whatever knowledge
17 HSSL allegedly had about BLMIS, knowledge that I am going to
18 point out is alleged in minute detail in Paragraphs 54 to
19 129 of the fourth amended complaint, is attributable to the
20 beneficial shareholders for whom HSSL was acting.

21 The key paragraph is Paragraph 132 of the fourth
22 amended complaint, which reads as follows. "The beneficial
23 shareholders had the same knowledge as HSSL regarding all
24 relevant matters relating to BLMIS and the fund's net asset
25 values at all relevant times." That's it.

1 And as I've already demonstrated, however, there
2 is no factual or legal basis for any such attribution given
3 the very limited execution-only scope of HSSL's agency. For
4 the reasons set forth at Pages 12 to 15 of Private Space's
5 reply brief therefore, none of the alleged activities by
6 HSBC entities regarding BLMIS in New York were carried out
7 as Private Space's agent or in any way attributable to
8 Private Space and do not provide a basis for subjecting
9 Private Space to personal jurisdiction.

10 I would like to turn now briefly to the issue
11 involving the use of a U.S. correspondent bank.

12 First, Private Space itself never had a U.S. bank
13 account of any type. That's undisputed. The funds used by
14 Private Space to make its investments in Fairfield came
15 either from an account at Citco Bank Nederland in Ireland or
16 a client account that HSSL had set up in HSBC Bank PLC in
17 London using funds from an account that Private Space had
18 set up in Luxembourg. The reference there is to Reply
19 Bergamasco Declaration Paragraph 13.

20 With respect to Private Space's investments in
21 Sigma, it is conceded that no use bank was used at all with
22 respect to those investments or subsequent redemption.

23 As for Sentry, Private Space made a total of five
24 investments and received one redemption in transactions in
25 which funds were momentarily routed through a U.S.

1 correspondent bank. As to that one redemption, Fairfield
2 made the payment from a bank in Ireland. The fourth amended
3 complaint says that the redemption payment was made to HSBC
4 Bank PLC in London, Exhibit A to the fourth amended
5 complaint.

6 The U.S. correspondent bank through which the
7 payment was routed was chosen by HSBC Bank PLC London, which
8 itself was chosen by HSSL. And that was a correspondent
9 bank not of HSSL or Private Space, but of HSBC Bank PLC
10 London.

11 The incidental clearing of U.S. Dollar payments
12 through a New York correspondent account on six occasions
13 over a roughly three-and-a-half year period -- that's five
14 investments in Sentry plus the one redemption -- is not I
15 submit a jurisdictionally relevant contact because the
16 principal wrong was not the use of the U.S. banking system
17 as it was in the Licci cases which involved in the words of
18 the Second Circuit, "The unlawful provision of banking
19 services to fund Hezbollah's terrorist goals." That's 732
20 F.3d 171, which resulted in the rocket attacks which injured
21 the Licci Plaintiffs or their family members. Or, as it was
22 in the Spetner case where the transfers via a U.S.
23 correspondent bank funded terrorist attacks by Hamas in
24 Israel that injured the plaintiffs in that case.

25 Here by marked contrast once the conclusory

1 allegations of imputed knowledge are removed from the
2 equation as they must be given the undisputed, extremely
3 limited scope of HSSL's agency for Private Space, the fourth
4 amended complaint is completely devoid of any factual
5 allegations of any actual wrongdoing at all on the part of
6 Private Space in connection with the incidental use of U.S.
7 correspondent bank by its custodian to facilitate the
8 transfer of funds from one foreign bank to another.

9 So too the fact that there was an alternative
10 albeit less attractive routing not involving U.S.
11 correspondent bank -- I'm talking here about the proposition
12 put forward by the liquidator's expert, Sarah Joyce, is I
13 submit further proof that electing to use the option of a
14 U.S. correspondent bank to facilitate the transfer of funds
15 from one foreign bank to another simply cannot be the
16 principal wrong as it was in Licci. That's also confirmed
17 by the fact that the liquidators are also seeking to claw
18 back Private Space's Sigma redemption payment which did not
19 involve the use of the U.S. correspondent bank at all.

20 One last point, Your Honor. The liquidators
21 contend that exercising jurisdiction is reasonable because
22 Private Space has been litigating here for ten-plus years.
23 That that is a classic bootstrap argument that should be
24 given no credence. Private Space was sued here and had no
25 choice but to defend itself. And to that end, Private Space

1 originally moved to dismiss for lack of jurisdiction at the
2 very first opportunity it had to do so. And that was in
3 2017, Dockets 48 and 49 and 61 and 62.

4 For all of these reasons and the reasons set forth
5 in Private Space's moving and reply papers therefore I
6 respectfully submit that Private Space's motion to dismiss
7 for lack of personal jurisdiction should be granted. Thank
8 you, Your Honor.

9 THE COURT: Thank you, Counsel.

10 MR. JONAS: Your Honor, Jeff Jonas from Brown
11 Rudnik for the liquidators. This will be brief, Your Honor.

12 Private Space acknowledges that it used HSBC
13 Securities Services Luxembourg SA -- you can call it HSSL or
14 HSBC Lux, I'll use HSBC Lux because that's what you used in
15 your opinion, Your Honor -- as its custodian and agent for
16 purposes of its investment in Fairfield. HSBC Lux
17 subscribed for Fairfield Fund shares on behalf of Private
18 Space as the beneficial owner.

19 Accordingly, the \$17 million of redemption
20 payments at issue here is subsumed within the larger amount
21 which liquidators seek from HSBC Lux. As the Court is
22 aware, HSBC Lux filed its own motion to dismissed based on
23 lack of personal jurisdiction and the Court issued its
24 memorandum opinion and order denying that motion on January
25 29th, 2004 including based on purposeful availment, use of

1 U.S. correspondent bank accounts, et cetera.

2 While there are additional relevant facts
3 supportive of the liquidator's position here, which I will
4 get to, at the outset because the Court has already
5 considered the facts and law relevant to HSBC Lux and found
6 personal jurisdiction, if the Court now agrees with the
7 liquidators that HSBC Lux conduct can be imputed to Private
8 Space, which they oppose, there is little more that needs to
9 be done here. Private Space's motion should be denied.

10 I won't again recite the relevant law regarding
11 agency or imputation because fortunately for us, Your Honor,
12 Private Space has already acknowledged and conceded
13 everything needed for the Court to impute HSBC Lux conduct
14 to Private Space. Beginning at Page 12 of its reply
15 memorandum, Private Space states, and I'll quote, "PSL of
16 course takes no issue with the notion that HSSL acted as its
17 agent when it carried out Sentry and Sigma subscription and
18 redemption instructions from PSL and arranged for the
19 related payments and that it, PSL, was aware of and
20 consented to those activities. Thus, the resulting
21 subscriptions and redemptions are binding on PSL as the
22 beneficial owner or principal on whose behalf HSSL was
23 acting." Those are their words, Your Honor. Not mine.

24 Private Space makes a tortured attempt to argue
25 that because the cope of the agency was somehow limited to

1 "ministerial actions" that HSL's actions can't be imputed.

2 That's nonsense, Your Honor.

3 What this defendant and many of the other
4 defendant today would say is this, just to put it in a clear
5 example, that a sophisticated foreign financial investor or
6 institution can hire another entity to act as ISA agent,
7 even they say agent, so I'll say agent. But if you don't
8 want to say agent, let's say recordholder, so that it can
9 knowingly, which I'll get to, knowingly invest in New York-
10 based Madoff and take advantage of the U.S. securities
11 markets. But if there's wrongdoing, it's not subject to New
12 York jurisdiction. That cannot be the law, Your Honor.

13 But let me come back. There are additional facts
14 which we don't even need the agency, which I think is a slam
15 dunk. The additional facts are as follows. Private Space
16 independently investigated the funds as potential
17 investments, Exhibits 22 and 23. Private Space directly
18 received diligence from the fund's manager, FGG, including
19 information and documentation indicating that the fund
20 substantially invested in BLMIS. Same exhibits.

21 Private Space directly received PPMs which, as
22 we've seen many times highlighted the fund's investment in
23 BLMIS. That's Exhibit 1, which is a Sentry PPM, and Exhibit
24 24, which is a Sigma PPM and the transmittal email.

25 And last, Your Honor, Exhibit 9 is evidence of the

1 redemption payments flowing through Private Space's agent's
2 correspondent bank account at HBUS.

3 Accordingly, Your Honor, Private Space
4 independently and directly knew its investment was into New
5 York-based BLMIS. It desired to invest and through
6 Fairfield knowingly invested in the U.S. securities markets.
7 And on that basis, Your Honor, Private Space's motion to
8 dismiss should be denied. Thank you.

9 THE COURT: Thank you, Counsel.

10 MR. LAMBERT: Briefly, Your Honor?

11 THE COURT: Please.

12 MR. LAMBERT: Michael Lambert for defendant,
13 Private Space.

14 Private Space of course stands by what it said in
15 its reply brief with respect to the -- it's the agency
16 relationship it had with HSSL. There is no question that
17 the actions that it took on our behalf by subscribing to the
18 funds bind Private Space. What my argument is, however, is
19 that that was a very limited agent. And when HSBC and HSSL
20 and other related entities were meeting with Madoff in New
21 York, meetings which Your Honor referenced in your decision
22 that denied HSSL's motion to dismiss, that those meetings
23 had nothing to do with its agency for Private Space and
24 therefore cannot be attributed to Private Space.

25 Private Space itself never had any meetings with

1 Madoff in New York, never had any meetings with Fairfield in
2 New York. And it was a very limited agency. We cite the
3 caselaw. The caselaw is black letter law. And agency --
4 you're only an agent to the extent that the agent is acting
5 within the -- the acts of an agent only bind the principal
6 to the extent that the agent's acts were in the scope of his
7 agency. And my argument was simply that whatever meetings
8 HSSL had in other capacities in New York with Madoff are not
9 binding on PSL because they were clearly not within the
10 scope of its agency for Private Space. They were not
11 undertaken with the consent, knowledge, or to benefit
12 Private Space. Thank you, Your Honor.

13 THE COURT: Thank you, Counsel.

14 MR. JONAS: Your Honor, Jeff Jonas for the
15 liquidators. I will accept -- for purposes of argument
16 right now I'll accept everything Mr. Lambert said. And I'll
17 say this. What we know for sure, because what they
18 absolutely admit is -- and I'll accept it for purposes of
19 this argument right now -- all we -- the authorization of
20 our agency was go subscribe and ultimately redeem -- go
21 subscribe to that fund for us. And that's exactly what they
22 did. And they signed a subscription agreement that
23 acknowledged they looked at a PPM that said that this was an
24 investment -- we've been through this many, many times --
25 this is an investment in Madoff. All of this or

1 substantially all of this money is going to Madoff.

2 So now he's saying, well, yeah, they were our
3 agent for purposes of the subscription and yeah, they knew
4 they were investing in Madoff, but there's a block there.
5 We're not charged with the subscription which we authorized
6 them to sign? It doesn't make any sense, Your Honor. And
7 never mind the additional facts I've put forth indicating
8 their direct, if you will, contacts that I think in and of
9 themselves would be enough to have them required to submit
10 to jurisdiction.

11 Thank you, Your Honor.

12 THE COURT: Thank you, Counsel.

13 MR. LAMBERT: Your Honor, just very briefly. It's
14 not my contention that we're not bound by the subscription -
15 -

16 THE COURT: Identify yourself for the record,
17 please.

18 MR. LAMBERT: I'm sorry? Oh.

19 THE COURT: Identify yourself for the record.

20 MR. LAMBERT: Sorry. Michael Lambert for Private
21 Space.

22 It is not our contention that we're not bound by
23 the subscription agreements that HSL signed on our behalf.

24 THE COURT: Thank you, Counsel. Okay, shall we
25 proceed to the next matter?

1 MR. JONAS: Your Honor, at some point could I just
2 get just a few minutes? A quick break? Whenever --

3 THE COURT: Sure.

4 MR. JONAS: I could go through another argument or
5 now. Whenever is convenient for you, Your Honor.

6 THE COURT: Why don't we take five minutes now.
7 Okay?

8 MR. JONAS: Okay, thank you.

9 THE COURT: It's 11:06. We'll come back at -- in
10 five minutes.

11 MR. JONAS: Thank you, Your Honor.

12 THE COURT: Okay.

13 (Recess)

14 CLERK: All rise.

15 THE COURT: Please be seated.

16 MR. JONAS: Thank you, Your Honor.

17 THE COURT: Okay, back on the record. Are we
18 ready to proceed with the next matter?

19 MR. WEIDNER: Good morning, Your Honor. Chase
20 Weidner from Gibson Dunn on behalf of the UBS entities, UBS
21 A.G. and UBS Jersey Nominees Limited.

22 THE COURT: Good morning.

23 MR. WEIDNER: Good morning. So as with the other
24 partis, I don't want to retread old ground that Your Honor
25 has already covered in your prior decisions. But the

1 parties did spend a fair amount of time this morning
2 touching on an issue that we had raised in our UBS Lux
3 briefing and we've raised again here. And it's an issue
4 that Your Honor did not address in the opinion.

5 We've heard the parties speak at length about
6 agency relationships and parent-subsidary relationships and
7 when contacts can be imputed. We've heard about agency
8 relationships, alter egos, and departments. And I just sort
9 of want to clarify here that the fund are not UBS's agent.
10 It is alleged that Citco is UBS's agent, and it is alleged
11 that Citco was also the fund's -- it was Sentry's agent.
12 But there's no allegation that Sentry was UBS's agent. And
13 I think that's a key insight that we've been trying to sort
14 of get across through our briefing, which is why the absence
15 of that relationship is why you cannot impute the contacts
16 of Sentry and its own investment in BLMIS to UBS in the
17 first instance. That's why Sentry's investments are its own
18 investments and not UBS's investments and the fact that UBS
19 knew that those investments, its investments in a separate
20 entity in Sentry or Lambda would ultimately end up in New
21 York does not change that dynamic. It also explains why the
22 2023 Southern District opinion that Mr. Jonas cited was
23 incorrect. And if this were the law, if this were the case,
24 then it would eviscerate the parent-subsidary caselaw and
25 agency caselaw that we've heard about at length this

1 morning.

2 Now, Mr. Jonas has also said, despite discussing
3 all this caselaw at length, that it actually cannot be the
4 case, that this cannot be the law. But it really dovetails
5 exactly with jurisdictional first principles. The Supreme
6 Court has made clear that jurisdictional caselaw is about
7 clear notice and fair notice and that parties should be able
8 to structure their affairs in such a way to avoid being
9 subject to jurisdiction in any given state or in the United
10 States in general. And when you look at the structure here,
11 that is exactly I would submit what the parties have done,
12 particularly for the foreign currency funds for Sigma and
13 Lambda where we're talking about UBS, a foreign bank,
14 investing a foreign currency in a foreign entity that
15 invests in another foreign entity that ultimately invests in
16 New York. And so quite to the contrary that it cannot be
17 the law, I think the law is quite clear on this, that the
18 contacts of Sentry cannot be imputed to UBS.

19 And so with those out of the way, then you're just
20 left with what the liquidators have alleged are UBS's own
21 contacts with the forum. And I think a key piece here is
22 something that we've argued and now the liquidators have
23 conceded in their response to a summary judgement motion
24 that was filed the Tab 3636 case, which is that each
25 redemption in this case is its own claim. And the fact that

1 each redemption is its own claim is significant in at least
2 two respects.

3 And so the first relates to the meetings and
4 emails that the liquidators have put before Your Honor.
5 It's incumbent upon the liquidators to show that these
6 redemptions at issue here -- and again, each redemption is
7 its own claim -- that each individual redemption arises out
8 of or relates to these meetings or these communications.
9 And the liquidators have not shown that these meetings, that
10 these individual redemption arise out of or relate to those
11 meetings, for example. And in some ways it's very clearcut.
12 If a meeting was in 2008, a claim based on a redemption that
13 occurred in 2006 or 2007 necessarily does not arise out of
14 or relate to a meeting that did not occur until several
15 years later. And so again, I think with respect to the
16 meetings and the communications which Your Honor has focused
17 on, the liquidators have not shown that the individual
18 redemptions arise out of or relate to them. And so those
19 meetings and contacts are not jurisdictionally relevant with
20 respect to a given claim or a given redemption.

21 Second, Your Honor has also cited the fact and has
22 cited to Licci and Spetner for the notion that repeated uses
23 of correspondent accounts in the United States can give rise
24 to jurisdiction when the harm is perpetrated through those
25 correspondent account uses. But by definition if each

1 redemption is a separate claim, we're not talking about
2 repeated uses of the wires, we're talking about single uses
3 of the words. And with respect to those single uses, I
4 would just add parenthetically that in a number of instances
5 the amount of money we're talking about was quite small.
6 There were some redemptions in the neighborhood of \$1,000,
7 \$2,000, \$3,000. And so that's what we're talking about when
8 we're also thinking about the reasonableness inquiry here as
9 well.

10 And just a final quick third point on this. The
11 liquidators allege that the redemptions at issue here went
12 from foreign bank accounts to foreign bank accounts. They
13 went from Sentry's account with Citco Dublin branch to
14 foreign brokerage and custody accounts abroad. And in fact
15 when you look at the evidence that they've put before the
16 Court, it confirms that that's the case, that the
17 redemptions at issue here for hundreds of the redemptions
18 we're talking about went from foreign Sentry accounts to
19 foreign brokerage and custody accounts where, according to
20 the liquidator's own allegations, UBS was required to have
21 an account.

22 And so I think when you sum all of this up, the
23 fact that the communications and the meetings, the
24 liquidators have not shown that these redemptions arise out
25 of or relate to those communications or meetings, the fact

1 that we're talking about a single use with respect to any
2 given claim, and the fact that the redemptions in many
3 instances are not alleged to have and the evidence seems to
4 confirm did not pass through the United States. That when
5 you sum all of that up, those distinctions merit a different
6 outcome here than with respect to the UBS Lux opinion that
7 Your Honor previously decided. Thank you.

8 THE COURT: Thank you, Counsel.

9 MR. JONAS: Jeff Jonas, Brown Rudnik, Your Honor,
10 for the liquidators, the plaintiffs in opposition of the
11 motion to dismiss for lack of personal jurisdiction.

12 I'm a little confused by some of the arguments
13 that were made, Your Honor. Because I think substantially
14 all of them were in fact addressed by the four opinions you
15 issued. We haven't said that Sentry was UBS's agent. In
16 fact, in your -- I think it was the HSBC Securities Services
17 opinion at Page 27, as you said, the relevant contacts were
18 not driven by the conduct of the Fairfield funds alone; they
19 were the result of Defendant's efforts to invest in BLMIS in
20 New York. That's what we're saying. So I don't think I
21 have to respond further than that.

22 As for each redemption is its own claim, Your
23 Honor, in large part you said the allegations, that is with
24 respect to subscriptions, et cetera, related to Defendant's
25 investment activities, that's the claim they, flow through,

1 they flow through all the redemptions. Once we've proven it
2 at the outset, I think we've proven it. So just to respond
3 to those.

4 But now let me get to my argument, Your Honor.
5 This is a \$108 million redemption claim against UBS AG. I
6 think the starting point and perhaps the ending point of
7 this particular analysis with respect to UBS should be UBS's
8 reply memorandum, Footnote 2, which states, "UBS does not
9 contest that the Citco subscriber's jurisdictional contacts
10 can be imputed to UBS." Citco Global Custody and Citco
11 Banking Corporation, which are -- those are the Citco
12 subscribers -- they acted as UBS's agent in subscribing for
13 Fairfield Fund shares for the benefit of UBS. Thus, despite
14 its many arguments that the Court does not have personal
15 jurisdiction over UBS because of its own contacts, it has
16 acknowledged that all of Citco's jurisdictional contacts,
17 which I reviewed previously and have set forth in our
18 papers, can be imputed to it, which is appropriate under and
19 consistent with relevant law because Citco was retained by
20 UBS as its agent.

21 I would like to -- so I don't know there's much
22 more to say there, Your Honor. I would like to note that
23 UBS filed a motion to dismiss for lack of personal
24 jurisdiction in the Madoff Trustee, Mr. Picard's action,
25 which was denied. And in its reply memorandum, Your Honor,

1 consistent with the arguments that were made here, I think
2 all of the arguments that they made there have been
3 dispensed with based on your memorandum opinions. They said
4 in -- this is their preliminary statement.

5 First, the purported U.S. orientated business
6 activities that the liquidators claim UBS engaged in are
7 jurisdictionally irrelevant. Second, the intent and
8 knowledge test pressed by the liquidators for imputing their
9 own contacts with BLMIS to UBS is contrary to binding
10 precedent. Third, the contacts the liquidators seek to
11 shoehorn into the dispute, subscription-related activities
12 do not relate to their constructive trust claims. Fourth,
13 allegation and evidence about the use of the U.S.
14 correspondent account fall short of the standards set forth
15 in binding precedent. Fifth, exercising jurisdiction over
16 this dispute, which involves numerous foreign parties and
17 centers on the alleged wrongdoing of yet another foreign
18 entity would be unreasonable. I think all of those
19 arguments have been dispensed with and are, frankly, out the
20 window.

21 In any event, the relevant contacts here are as
22 follows. Because, just as I think I have demonstrated
23 before, even without the agency there is enough.

24 The same form of PPMs, private placement
25 memoranda, were used with respect to UBS's investments in

1 the funds as we've seen before. That is PPMs referencing
2 Madoff, BLMIS, its split-strike conversion strategy, et
3 cetera, et cetera. They knew they were investing in the
4 U.S. securities markets.

5 Not only did Citco, UBS's agent, receive these,
6 but UBS received these directly. Those are at Exhibit 10
7 and 11. UBS sent its subscription monies to Citco's U.S.
8 correspondent account at HSBC on 69 occasions to make more
9 than \$24 million in subscription payments. UBS received at
10 least seven redemption payments totaling approximately five-
11 and-a-half million dollars that went through Citco's U.S.
12 correspondent bank account at HSBC. The support for what
13 I've just stated, Your Honor, is Exhibits 46 through 49.

14 UBS instructed its agent, Citco, to sign many,
15 many subscription agreements governed by no law and which
16 provided for New York as the forum for any related
17 litigation, Exhibits 43 through 54.

18 UBS itself conducted due diligence and other
19 activities both within and aimed at the United States by
20 requesting fund-offering materials from U.S. entities,
21 meeting with the fund's manager, FGG, three times, at least
22 twice in New York to discuss the funds, and communicating
23 with U.S. and New York-based entities and personnel on
24 several occasions about Sentry's relationship with Madoff
25 and UBS's investment in the funds.

1 For example, Your Honor, Exhibit 7. It's a 2003
2 email with the subject line September 24th meeting at UBS
3 New York. Exhibit 8, a 2008 email regarding meeting with
4 FGG in New York. Exhibit 9, another 2008 email regarding
5 meeting with FGG.

6 UBS also engaged in regular and extensive
7 communications with FGG in the United States. For example,
8 August 26th, 2008 email from UBS employees requesting and
9 receiving fund documents from FGG on behalf of a "client who
10 is interested to have exposure to Madoff".

11 There is nothing random, fortuitous, or attenuated
12 about UBS's direct contacts with New York. Moreover, UBS
13 accepts that its agent Citco's many contacts with New York,
14 including use of U.S. correspondent bank accounts, should be
15 imputed to UBS. On that basis, Your Honor, UBS's motion
16 should be denied. Thank you.

17 THE COURT: Thank you, Counsel.

18 MR. WEIDNER: Did you address Jersey? I'm sorry.
19 UBS Jersey? Are you going to do that now? (indiscernible).

20 MR. JONAS: (indiscernible). Okay. One minute,
21 Your Honor. I just have a few other points. Thank you.
22 Sorry for the confusion, Your Honor, there.

23 There's two UBS entities. There's AG and Jersey.
24 And I was a little confused, I apologize. With respect to
25 UBS Jersey Nominees Limited, it's a \$4 million redemption,

1 Your Honor. I won't spend too much time on this, but the
2 relevant facts and law are similar to those relating to UBS
3 AG. And again, UBS Jersey doesn't contest that its agent
4 Citco's jurisdictional contacts can be imputed to UBS
5 Jersey.

6 More particularly, Your Honor, I will be brief,
7 UBS Jersey used Citco as its agent to invest in the funds.
8 UBS itself received copies of subscription agreements.
9 That's Exhibit 3. Citco as UBS Jersey's agent, again,
10 received private placement memorandums. UBS Jersey entered
11 into the same form of brokerage and custody agreement with
12 Citco as UBS AG. UBS's agent entered into at least one
13 long-form subscription agreement governed by New York law
14 provided for New York courts. And again, Your Honor, for
15 all the same reasons, UBS Jersey's motion should be denied.
16 Thank you.

17 THE COURT: Thank you, Counsel.

18 MR. WEIDNER: Just a few brief points, Your Honor.

19 THE COURT: Just identify yourself for the record.

20 MR. WEIDNER: Sorry. Chase Weidner for Gibson
21 Dunn on behalf of the UBS AG and UBS Jersey Nominees
22 Limited.

23 You heard Mr. Jonas note that it's a \$108 million
24 redemption claim and a \$4 million redemption claim. But
25 that ignores again the fact that they themselves have

1 conceded that each of these redemptions is a separate claim.
2 And so you can't just sum all of these redemptions up. You
3 can't sum all of these meetings and emails up and just
4 pretend like it's one monolith. Right? They have to show -
5 -

6 THE COURT: How do you connect a meeting to a
7 redemption?

8 MR. WEIDNER: How do you connect a meeting...

9 THE COURT: To a redemption.

10 MR. WEIDNER: So for example, so if we were to
11 look at some --

12 THE COURT: Is it just timing? If it was before
13 versus after?

14 MR. WEIDNER: So I think timing would be relevant.
15 But also if we look at the nature of the meetings
16 themselves, you can see. So, for example, one is about I
17 would like you to describe the Sentry platform to an
18 individual who works for UBS, right? And that person will
19 then presumably go and try to get individual investors to
20 give their money to UBS to ultimately give to Sentry. And
21 so if you could tie, for example, that meeting to subsequent
22 investments, then you would be able to show a relationship
23 between the two. You could show that the claims, that the
24 redemptions here arise out of or relate to those meetings.
25 But just a general meeting that occurs in 2003 that says,

1 hey, this one individual from UBS is coming to New York,
2 could you generally educate him on this so he can see if he
3 can go get clients to do something with that information
4 does not show that this specific redemption is at issue
5 here. The hundreds of them across several years arise out
6 of or relate to that specific meeting.

7 THE COURT: Thank you, Counsel.

8 MR. WEIDNER: And so, again, I think if you look
9 at the meetings on their face, Mr. Jonas went through some
10 of them, you'll see that they're not specific to any
11 redemptions. And of course I would also point out the
12 timing issue, that many of them post-date many of the
13 redemptions at issue here. And I would say the same thing
14 for the emails as well. Right? You would have to have a
15 closer tie than just the fact that it's between UBS and
16 between Sentry in order to show that the specific
17 redemptions here arise out of or relate to them.

18 Mr. Jonas also noted that there are at least seven
19 redemptions that went through U.S. correspondent accounts.
20 I would just note that they've alleged hundreds of
21 redemptions. And so that seems to concede that in fact
22 hundreds of them did not go through U.S. correspondent
23 accounts with respect to Sentry. I would also again
24 highlight that there is no allegation with respect to Sigma
25 and Lambda that any of the redemptions or subscriptions went

1 through any correspondent accounts in the United States at
2 all.

3 And then just finally, Your Honor, with regard to
4 Citco's jurisdictional contacts, its' true that we don't
5 dispute that Citco's jurisdictional contacts can be imputed
6 to UBS with the scope of their agency, right? To the extent
7 that they are acting for the benefit of UBS, not Citco's
8 contacts as a whole, right? That's the nature of agency
9 relationships and the nature of how contacts get imputed.

10 But I also want to clarify that the key point here
11 is there are these tests for agencies and parent
12 subsidiaries and the fact that you need to be an alter ego
13 or department in order to impute contacts from one entity to
14 another entity to sort of bridge across the corporate
15 separateness divide there. And our point is that while
16 Citco was an agent for UBS and separately -- there's a
17 cleaner divide here -- Citco was an agent for Sentry, what
18 Sentry ultimately did cannot bridge that corporate
19 separateness divide in the absence of an agency relationship
20 and alter ego relationship, a department relationship,
21 something like that. All the things we've been discussing
22 today. And that's the reason that Sentry's ultimate
23 investment in Madoff can't be imputed back to UBS, because
24 there's a clean divide there and legal doctrine that we have
25 in these other contacts to divide -- or to bridge that gap.

1 Thank you, Your Honor.

2 THE COURT: Thank you, Counsel.

3 MR. JONAS: Your Honor, Jeff Jonas from Brown
4 Rudnick, for the liquidators. I'll just close with this,
5 Your Honor. Their words, UBS does not contest the Citco
6 subscribers' jurisdictional contacts can be imputed to UBS.
7 Footnote 2 of their reply memorandum. Thank you, Your
8 Honor.

9 THE COURT: Well, they're saying it's within a
10 narrow scope I guess. Right?

11 MR. JONAS: How narrow -- let's keep it very
12 narrow. They signed a -- they told them go subscribe.
13 Okay. They signed a subscription agreement that ties to a
14 PPM that says this is an investment in Madoff. Is that
15 narrow enough? I don't think it could be any narrower.

16 THE COURT: What do you make of the argument about
17 meetings occurring after the redemption --

18 MR. JONAS: Your Honor, I agree with that, Your
19 Honor. And, A, I don't think we even need that, frankly. I
20 think that's kind of down here after we've got jurisdiction
21 on any number of bases. But I will say, Your Honor, that I
22 don't think that's -- and I don't think anybody cited
23 particular cases on this point. But I don't -- to me that
24 does not feel right for a jurisdictional analysis because
25 look at what the true test is. Are the contacts fortuitous,

1 attenuated? Are the contacts such that the party would say,
2 oh my god, how did I end up in New York? That's the basic
3 test. It is a bit of a field test. I don't think as to
4 meetings, correspondence, I don't think when you're looking
5 at that kind of conduct, I don't think you have to tie that
6 particular conduct. It related to their investment. We
7 know that. There was no other reason for them to be there.
8 They talked about their investment and they came into New
9 York. They talked to people in New York. I think all of
10 that demonstrates that it certainly -- context was certainly
11 not attenuated or fortuitous or random such that should have
12 any expectation that they wouldn't be subject to New York
13 jurisdiction.

14 Thank you, Your Honor.

15 THE COURT: Thank you, Counsel.

16 MR. WEIDNER: Just briefly, Your Honor. We do
17 cite a case for the notion that events that postdate the
18 relevant conduct, that the claims do not arise out of or
19 relate to conduct that occurred long after the thing at
20 issue. So meetings in 2008, claims based on redemptions
21 that occurred before 2008 don't arise out of or relate to
22 meetings in 2008. That's on page 4 of our reply brief.

23 And then just briefly, I realize Mr. Jonas says
24 that it doesn't feel right that those things should be
25 segregated. But the claims must arise out of or relate to

1 the contacts themselves. And so regardless of how Mr. Jonas
2 feels, a claim does not arise out of or relate to something
3 that happened well after the whole event occurred. Thank
4 you.

5 THE COURT: Thank you, Counsel.

6 MR. JONAS: Last, Your Honor, I just want to make
7 sure you're aware it's Exhibit 7. They met in September in
8 New York in 2003. And I think it's somewhat like fruits of
9 a -- everything follows, Your Honor. So thank you.

10 THE COURT: Thank you, Counsel. Shall we proceed
11 to the next matter on the agenda?

12 MR. JONAS: I think he's virtual, Your Honor.

13 THE COURT: Okay. So we covered three and four on
14 the agenda?

15 MR. JONAS: Yes.

16 THE COURT: Yes. So we're up to five?

17 MR. JONAS: Yeah. Thank you, Your Honor. There's
18 five, six, and seven left.

19 Oh you're right. Sorry, Eric. Yeah, we're on
20 yours. Oh, I'm sorry, Number 5. Julius Baer. Sorry about
21 that. And Mr. Gilmore is Altipro, Your Honor.

22 MR. HALPER: Your Honor, may I proceed?

23 THE COURT: Please.

24 MR. HALPER: Thank you. Again, Rick Halper with
25 McKool Smith for Defendant, Bank Julius Baer. We represent

1 Bank Julius Baer in two actions. Again, it's Adversary
2 Proceeding 10-3635 and 10-3636. The allegations in those
3 two actions are virtually identical. And for the purposes
4 of these motions, I think we can treat them the same. I
5 think my adversary will likely agree with that. And so for
6 purposes of that, we're going to treat this as one
7 collective.

8 I did want to start, Your Honor, by -- well,
9 before I do that just as some of my other co-defendants and
10 colleagues have said, we are resting on our papers and
11 relying on our papers for a number of the legal arguments
12 we've made, some of which or many of which you have
13 addressed in some of your prior opinions. You've heard a
14 lot of argument both today and in prior hearing about some
15 of those arguments. And so we adopt the arguments of our
16 co-counsel and from our counsel on the related proceedings
17 from the prior hearing as applicable. And you'll see that
18 that's also borne out in our briefs.

19 But I'm going to focus on a couple of things that
20 I think distinguish these cases and Julius Baer from some of
21 what you've seen before and ruled on before.

22 So first let me just start with a high-level look
23 at these actions and why they are different. So these two
24 actions included a multitude of defendants, unlike some of
25 these other actions that are geared towards maybe sort of a

1 set of corporately related defendants or a handful of
2 defendants that were tied together by the underlying
3 transactions and investments that are at issue. Here you've
4 got actions that are against a multitude I think in the 3636
5 action. It might have been 80-some-odd defendants,
6 something to that tune, all of which are completely
7 independent of each other. There's no connection other than
8 that ultimately we're talking about investments that made
9 their way into Fairfield Sentry and related funds. But
10 other than that, there's no connection between these
11 defendants whatsoever.

12 The group pleading issue came up, and I want to
13 address that a little bit.

14 In the complaints here -- and again, unlike some
15 of the actions that I think Your Honor has already ruled
16 upon, there are virtually no jurisdictional elements
17 whatsoever. Not only about Julius Baer, but about any of
18 the defendants. The specific allegations that actually
19 speak to and name and address Julius Baer and then the same
20 for other individual defendants I think are of sum total of
21 two paragraphs. And the paragraphs say, one, they establish
22 Julius Baer is a Swiss bank that's located in Zurich.
23 Clearly that does not establish jurisdiction in the U.S.
24 And the other allegation, a much more general one, and we'll
25 get into some of this, is the Citco subscribers as they are

1 referred to in the complaints may have paid some of the
2 redemptions to the benefit or an account of Julius Baer and
3 then other of these individual defendants. That is it.
4 That is the sum total of the jurisdictional allegations.

5 I would submit to you, Your Honor, that there
6 never was a proper predicate in this case, unlike some of
7 the others, for the jurisdictional discovery that was
8 allowed. You may say, well, okay, but we've had it and
9 we're going to -- I'm going to address it shortly. But
10 there is no basis and it would be improper and it's an
11 improper use of jurisdictional discovery to allow plaintiffs
12 to through that discovery basically rewrite and/or
13 supplement and amend their complaint. Jurisdictional
14 discovery is granted when you have some jurisdictional
15 allegations, there is a dispute over the factual basis and
16 correctness and accuracy of those allegations. And then you
17 turn to some jurisdictional discovery to determine what is
18 actually correct.

19 So simple example, you might have an allegation,
20 well, they had a business in the U.S., it was located here.
21 They had bank accounts, they had telephone numbers, they
22 were transacting. Those meetings, even U.S. meetings
23 occurred. That's the basis for jurisdiction. Defendants
24 come along and say that's not correct, we were never in the
25 U.S., you've got the wrong entity, you're describing

1 something different. We contest that. We put in, you know,
2 a declaration that says that's not true, we were never in
3 the U.S. Now maybe there's a cause or a basis to say, okay,
4 well, we've got to get to the bottom of this. Let's have a
5 little jurisdictional discovery and figure out what's the
6 truth. That is not what happened here.

7 Here there is no jurisdictional allegations,
8 barest bones on the pleadings. They got jurisdictional
9 discovery anyway, and now they want to take that
10 jurisdictional discovery and say, look, here's our case.
11 Here's all the allegations we never included, and we want
12 you to treat them as if they were part of the complaint.
13 And that's just presented in a brief. That's not the way to
14 amend a complaint. That's not a proper use of
15 jurisdictional discovery.

16 And so in the first instance we think, frankly,
17 all of that should be disregarded and you should rule it on
18 the pleadings. And clearly there's no case for jurisdiction
19 there. That all being said, if we credit and take a look at
20 the jurisdictional discovery that was taken, it doesn't add
21 up even close to what they claim it does. And it's very
22 important that we start then, taking a hopefully fairly
23 brief walk, but a walk nonetheless through the evidence that
24 they are relying on to make their case for why there is
25 jurisdiction over Bank Julius Baer.

1 So let me start -- and if you look in their brief,
2 it starts with the background. They kind of walk through
3 the story, if you will, Your Honor, about their basis for
4 saying they have jurisdiction over Bank Julius Baer. And
5 then throughout the rest of the brief, they refer back to
6 the very same documents. The only problem is the documents
7 don't really support what they say they support.

8 So one thing I want to start with, which is
9 actually even before you get to their background section,
10 it's on the very first page of their brief. Liquidators
11 allege that Julius Baer had knowledge of Madoff's fraud.
12 Straightforward. They say we actually had knowledge of the
13 fraud. That is patently false. There's no support for
14 that. And then later in a footnote, I believe it's Footnote
15 14, the liquidators concede we have no evidence or documents
16 that Julius Baer actually knew about the fraud or knew that
17 the net asset values of Fairfield's funds were inflated. We
18 don't have that discovery. So boldface inaccuracy on the
19 beginning of the brief. Later, a concession that that's not
20 actually the case.

21 And so I would urge Your Honor both to be looking
22 at the specific exhibits here and their footnotes where they
23 tend to make a lot of the concessions that contradict,
24 flatly contradict some of the bald assertions that they make
25 in the text of their brief.

1 So they allege that Julius Baer first started
2 subscribing to Fairfield Sentry in 1998. They don't allege
3 anything prior to that date about meetings, knowledge,
4 anything of that nature. But that's when the subscriptions
5 start.

6 They then say Julius Baer supposedly sought a
7 meeting with Madoff in 1999. And they refer to Exhibit 31.
8 There is an email suggesting that maybe a meeting was trying
9 to be scheduled. But clearly that meeting, which as the
10 documents show didn't actually happen, did not influence or
11 have an impact on a decision to invest which supposedly
12 predated that. So to the extent there was a meeting in the
13 U.S. after the investment started -- and this was a point
14 that was just being discussed in the last argument -- that
15 meeting has no jurisdictionally relevant relevance to
16 establishing contacts or the transactions that are at issue.

17 They then say, wait, there's more meetings. So
18 they jump five years to 2003. This is Exhibit 33 to their
19 opposition. And they say, okay, there's going to be another
20 meeting. However, when you look at the emails or the email
21 they have that suggests there's a meeting or that they're
22 trying to schedule a meeting at that time with Fairfield,
23 the meeting is -- or as outlined in the email and that
24 exhibit is all about other Fairfield funds. And this is a
25 point that I think gets lost both in these actions and in

1 all of the actions that you've been hearing about from the
2 liquidators, Your Honor, Fairfield Greenwich Group had the
3 Fairfield Sentry fund and Sigma and Lambda, which have
4 obviously been the focus here. They also had a whole series
5 of other funds that have nothing to do with Madoff, a whole
6 other business that they were trying to develop and push and
7 meet with people to get people to invest in those other
8 funds. Because if you step back -- and I don't think this
9 is controversial and it's fairly sort of well-known and sort
10 of public domain -- investments in Sentry was not the thing
11 that Fairfield had to go around and try to sell to people.
12 People knew about that fund, people wanted into that fund.
13 Lots of times they couldn't get into the fund because it was
14 closed off. There was this allure that was created, right,
15 that was going to attract people.

16 So when you're having these meetings that they
17 point to -- and just show -- there's an email and somebody
18 from Julius Baer is on it and somebody from Fairfield
19 Greenwich Group is on it. That doesn't mean it's a meeting
20 that has anything to do with Fairfield Sentry. And this
21 email -- again, this is Exhibit 28 -- lists all these other
22 funds that Fairfield Greenwich Group is trying to push. Let
23 us tell you about all of these other funds. That's what
24 that meeting was going to be about.

25 The only other meetings that they point to were --

1 of these other subsequent meetings were in Switzerland by
2 the way also. So it's not only the topic is not relevant to
3 what's at issue in the complaint, but it's not really a U.S.
4 contact because there's not people meeting in the U.S.

5 So they point to one in October of 2003. That
6 also appears to not have gone forward. And then they point
7 to another one in 2007. Those aren't U.S. contacts.
8 They're not linked to the transactions. And Your Honor can
9 take a look at those. Those are at Exhibits 22, 23, and 27.

10 So that's pretty much where it stops and ends as
11 to meetings. And I would just add one other point that did
12 come up in the last argument and just to supplement what my
13 co-defendant said. There is caselaw that we've cited and
14 other defendants have cited about this issue as to are the
15 meetings connected to the transactions. And if they're not,
16 it's really not relevant for jurisdictional purposes.

17 So just by way of example, Phoenix Ancient Art,
18 S.A. v. J. Paul Getty, 2018 WL 1605985 *1317, Southern
19 District of New York, meetings in New York that do not
20 result in the execution of contract or are not essential to
21 or do not substantially advance the business relationship
22 rarely provide the basis for jurisdiction pursuant -- and
23 then it goes on.

24 Holding that -- same case holding that even
25 meetings which rise to the level of transacting business in

1 New York nonetheless do not establish personal jurisdiction
2 where the plaintiff's claims do not arise out of those
3 contacts. Because there is no substantial nexus between the
4 transaction of business and the cause of action alleged.

5 And then one more. V Cars, LLC v. Israel Corp.,
6 902 F. Supp. 2d 349, 361-362 (S.D.N.Y. 2012), finding that
7 contacts are not sufficient where the only meetings that
8 occurred in New York were exploratory, nothing was promised,
9 no agreements were negotiated, and the parties merely
10 presented on their business.

11 So they have no evidence of the specific details
12 of, A, whether these meetings actually occurred, and what
13 the substance beyond the email I pointed you to that talks
14 about other funds, what the substance of this meeting was
15 intended to be or may have been if any of them in fact
16 occurred. But it certainly doesn't meet that standard for
17 being a relevant jurisdictional contact.

18 So even Mr. Jonas, and I'm sure he'll speak to
19 this again, but said, well, okay -- when this came up
20 before, the meetings, maybe there's a point. That doesn't
21 matter. We've got other stuff. Okay, let's go to the other
22 stuff.

23 The biggest I think thing that they hang their
24 hook on and to point to knowledge of these defendants and
25 say, look, they knew what they were doing and they

1 deliberately took advantage of using U.S. funds, U.S.
2 investment, U.S. securities, et cetera. And they understood
3 Madoff was involved and he's holding the funds and all of
4 that knowledge. And they point to the private placement
5 memoranda and they say BJB, Bank Julius Baer, received these
6 just like these other folks. And so they're stuck. Right?
7 That alone probably does it in their mind.

8 Well, again, let's take a closer look at what they
9 point to. And I point to three exhibits, Exhibit 11, 29,
10 and 30.

11 So Exhibit 11 is Fairfield Sentry Limited. It's
12 their information memorandum. The copy they have included
13 doesn't have a Bates stamp. It is not a signed version of
14 anything. There is no cover letter, no email, nothing to
15 suggest that this went to Julius Baer, that they had it or
16 even when they had it if they did.

17 So that one doesn't get us very far because it's
18 just an example of they had these memorandums out there.
19 But we've got to do more than that to connect it up to
20 Julius Baer.

21 So they go okay, well, let's go to Exhibits 29 and
22 30 and that will answer the question, right? We've got a
23 cover email from Fairfield Greenwich Group to somebody at
24 Julius Baer. It's got the Sentry offering memo attached,
25 it's got the Sigma offering memo attached. And so 29 and 30

1 are actually the same email and the same exhibit. It's just
2 one has one attachment attached and the next one has the
3 second attachment attached.

4 And it says, "Dear Ms. Beer," Ms. Beer is the
5 Julius Baer representative, "Thank you for your message of
6 today. We appreciate your interest in Fairfield Sentry
7 Limited and Fairfield Sigma. As part of your request, we
8 are pleased to enclose the offering memoranda of both
9 investment funds for your review." Okay, that sounds like
10 somewhere for their benefit. Why am I highlighting this?

11 Well, let's look at the date. It's July 10th,
12 2007. That is the only evidence they submit as to when this
13 was received by Julius Baer. So all of those transactions
14 that occur before it, to the extent that they are relying on
15 the information in these memoranda to say, well, Julius Baer
16 knew about this and specifically used that knowledge when
17 they conducted all of those transactions that came before
18 this, there is no nexus here. There is no evidence.

19 And to my point earlier, they can't have it both
20 ways. Either we are in jurisdictional discovery land and
21 we're going to rely on the specific evidence that they have
22 put forth, or we can go back to the pleadings, which contain
23 none of this and say nothing. But they can't say, well,
24 we've got information memoranda. That's 2007, but that's
25 kind of good enough, we can kind of just assume there was

1 something earlier. That doesn't work.

2 So next point. What do they turn to next?

3 Because obviously this is a totality of circumstances kind
4 of exercise, Your Honor. I think you even noted that in
5 your earlier opinions.

6 So -- well, let me just add one note to the
7 memoranda to just hammer home the point of what their
8 position is. They say in their brief knowing that investing
9 in Sentry would require use of Sentry's U.S. correspondent
10 account as the ultimate destination of the subscription
11 payments. BJB nonetheless chose to invest in Sentry.
12 That's Page 11 of their opposition brief. And they rely on
13 those exhibits, the 2007 and the undated exhibit.

14 So if they knew anything based on this evidence,
15 it's not until July of 2007 when we're pretty close to the
16 end of the road here on where these transactions occurred
17 and before the fraud actually got revealed.

18 So the next piece of evidence that they turn to,
19 they say, okay, well, maybe those are sort of related, but
20 Julius Baer also received tear sheets for Sentry and Sigma.
21 They were getting information about these funds, about the
22 performance, Exhibits 13 and 14.

23 If you look at 13 and 14 again, they are dated
24 2007. That's the evidence that they have. That's May 2007.
25 So we've moved up maybe from July, but we're at May 2007.

1 Then they point to what they say admittedly is an
2 undated FGG, Fairfield Greenwich Group investor
3 presentation. But the email that's attached to that gives
4 us the answer. Maybe that tells us what the date is. This
5 is Exhibit 19. I just want to read you something from that
6 exhibit.

7 So they say, well, they have these presentations
8 that talked about how Sentry worked and, you know, BLMIS's
9 role in it and so forth. So that is a November -- Exhibit
10 19, that's a November 6th, 2008 email that that's attached
11 to. So now we're going the other direction, even later.
12 We're literally a month before the fraud is revealed. That's
13 where they point to evidence that says, okay, that's when
14 Julius Baer had some information in hand that it knew how
15 this was working.

16 And that email further says -- it's something that
17 they didn't sort of point to in their papers. But the email
18 says, amongst some of the other language in here -- this is
19 from someone at Julius Baer saying, "Fairfield Sentry I
20 don't know too well. Since we don't have any of the single
21 manager funds on the platform so far." That's as of
22 November 2008. "Certainly it's very good performing with a
23 long track record in investing equities and options
24 strategies, but it's a bit untransparent to understand fully
25 how they work as I've heard from other sources." And

1 attached is this presentation. That's November 2008. It's
2 clear from that email that Julius Baer does not seem to have
3 much knowledge at all about Fairfield Sentry and it's very
4 late in the day as far as what we are concerned about for
5 establishing jurisdictional contacts.

6 So then they have pointed to today repeatedly and
7 I'm sure we'll hear about again, well, okay, there's a
8 subscription agreement, right? So all of this much ado I
9 have just made, that's not that big a deal, right? Because
10 we've got the subscription agreements. Not so. Not here.

11 The liquidators concede they did not find in
12 discovery a long-form subscription agreement executed by
13 Citco in connection with the BJB redemptions at issue here.
14 So again, they're going to tell you, well, you have to
15 assume it was there then if they didn't make investments in
16 Fairfield Sentry. But I don't think we have to make that
17 assumption. Maybe the long-form subscription agreement
18 never got signed and the transactions went through anyway.
19 That's why we need the evidence. They've had more than a
20 chance, two years' worth, to get jurisdictional discovery
21 and evidence, which sort of detoured to do all that even
22 though there was no predicate for it. And yet they come up
23 empty on that. So all of the stuff that they point to in
24 the subscription agreement that says this incorporates the
25 memorandum, this says you know this and that information,

1 and we can then charge you with all of that knowledge, they
2 don't have the evidence to prove that and to make that case
3 here.

4 So then they say, okay, we do have examples of the
5 short-form subscription agreements. And so as you may
6 recall, Your Honor, there was a longer-form subscription
7 agreement that usually got signed at least once at the
8 beginning and then there were these tagalong sort of one or
9 two-pagers that just said, well, we incorporate the long-
10 form that we already signed and sign us up for some more
11 shares, which is the shorthand way of doing it.

12 They point to one example, it's Exhibit 25.
13 There's nothing on the face of it that really ties it to
14 Julius Baer. And even if it did, without the long-form
15 subscription agreement, I would submit that doesn't get them
16 very far.

17 Then they get to the point in their background
18 when we're talking about the redemption process, which is
19 really what this case is about. And that's sort of the
20 focus. But they point to the redemptions and they start
21 saying, well, Citco Bank designated its U.S. correspondent
22 account in certain of these transactions and Sentry used a
23 correspondent account in certain of these transactions. But
24 what's an important distinction here, Your Honor, and to
25 kind of go back where I started where these cases are

1 somewhat different, materially different I think than some
2 of the other cases you've seen so far, is there's no
3 allegations here that Julius Baer was using its own
4 correspondent account, which was something that it did rely
5 on in some of the prior opinions for some of the other cases
6 and other contacts. They were using their own correspondent
7 account. It wasn't passive, I think as you noted in your
8 opinion and you also noted, the defendants in those other
9 contacts were in fact the registered shareholders of the
10 funds at issue.

11 Here, a completely different story. And I sort of
12 said this at the beginning. But the other big distinction
13 about this case is -- and why you've perhaps got sort of all
14 these multitude of defendants is all of the transactions at
15 issue in this case were pursuant to shareholder agreements
16 that Citco bank signed. Citco bank was the registered
17 shareholder, and it did it on behalf of other defendants,
18 Bank Julius Baer was one, who in turn did it on behalf of
19 its clients.

20 But this is not the same case as those where you
21 have these individual defendants signing up directly with
22 Fairfield Sentry and becoming the registered shareholder and
23 then directing to their own correspondent account. It's a
24 different set of facts, Your Honor. I don't want to gloss
25 over that and treat it, well, it's all the same, it's no

1 different. It is different.

2 Ane one thing that came up earlier -- and Mr.
3 Jonas made the point, well, these are fronts. It's all
4 fronts, right? Citco (indiscernible) just a front for
5 Julius Baer and that's how we should look at this. Well, I
6 sort of posed a different way of looking at that, Your Honor
7 and would pose sort of a rhetorical question to think about
8 it as you go through this. But how many levels and steps
9 removed is attenuated enough? When do we get to the point
10 where we say, well, you weren't the one who was actually
11 investing in Madoff. That was Sentry. And you weren't the
12 one who invested in Sentry. That was Citco. Okay. Now we
13 get to the next level. How many layers can we go back?
14 Maybe it's liquidators' view that you could be ten times
15 removed and it would be the same argument. But there seems
16 to be no principal distinction at this point. So every time
17 you remove a layer of direct nexus and activity, that should
18 under basic jurisdictional principles be relevant to the
19 totality of circumstances in deciding that this is not
20 enough. It's not enough for these defendants under these
21 circumstances, which are different than what you've seen in
22 some of the other cases, to expect that they would have been
23 hailed into court on that basis. And we talked already --
24 somebody else talked about and I won't repeat and belabor
25 that relationships, business relationships, totally

1 legitimate, non-nefarious relationships -- this happens
2 every day all over the world -- can be arranged to try to
3 avoid certain jurisdictional contacts. There's nothing
4 wrong with that. It happens all the time. And so to the
5 extent that this is what was happening in this context in
6 part, whether they want to attribute it to that, it's still
7 removed enough that it shouldn't make a case, especially
8 when we've seen all the other things that they've pointed to
9 are not also helping to support their case that there's
10 nothing here. And that's why we go back to when we started
11 with the original pleading, there was nothing there. Even
12 with the evidence. And if you consider the evidence, it
13 doesn't add up to what they claim it does.

14 The only other thing I wanted to note, Your Honor,
15 is just on the jurisdictional discovery and when we're in
16 the land where we're going to credit it and say, okay, well,
17 we've gone down that road so we are going to -- whether it
18 was legitimate or proper at the time it was done, we've made
19 that choice. And I submit to you that I don't think that's
20 an irrevocable choice and you should look back at the
21 pleadings. But at this point the liquidators are charged
22 with coming forward with whatever evidence they have to make
23 their jurisdictional case, and it has to be factually
24 supported. And you've seen the type of record they've put
25 together, both timewise, date-wise, substance-wise. It does

1 not make the case and support the narrative that they have
2 tried to lay out in their papers. And for those reasons, we
3 submit there is no jurisdiction over Bank Julius Baer here.
4 And unless you have any questions, Your Honor, I will rest
5 on that and reserve time if necessary.

6 THE COURT: Thank you, Counsel.

7 MR. JONAS: Again, Your Honor, Jeff Jonas, Brown
8 Rudnik, for the liquidators. I'm just going to go off my
9 remarks for a moment just to say the following, Your Honor.

10 I think that a lot of what was said is old ground
11 that has been plowed. It's been plowed by the Second
12 Circuit, by Judge Schofield, it's been plowed by Judge
13 Morris, and it's been plowed by you. The question isn't how
14 far back or how many -- it's a simple question. Did this
15 particular sophisticated financial investor knowingly want
16 to take advantage of the U.S. securities markets and invest
17 in Madoff? If they did that, they're subject to
18 jurisdiction. Full stop. End of story. That's my view. I
19 know you didn't go there in your opinion because you had
20 other facts to work with. And you said, well, yeahy, they
21 did that. And they used correspondent banks, and they might
22 have had meetings. And I get it. So you didn't have to, so
23 you didn't.

24 But I think the district court has gone there.
25 They looked at it very carefully and they were dealing with

1 the question of whether the defendant there should be able
2 to have an appeal because the defendant said, hey, all Judge
3 Morris did -- I think the word was simply -- was found that
4 if you simply and knowingly invest in Madoff, is that
5 enough? District court said yes.

6 So, again, I'm going to show more. But I think a
7 lot of this is just going around in circles. And I think
8 with the additional defendants, I bet we will continue to go
9 around in circles. And I don't think we need to. And I
10 think, as I said, just to summarize -- and I'll get to the
11 detail -- there's two bases. He spent a lot of time on,
12 well, we had no direct contacts and the dates were this --
13 I'm going to blow all that away in about two seconds. I'll
14 get there. But that's even secondary. Because in this
15 case, it has to be the case that when you use an agent, that
16 you impute the agent's conduct to the principal. When they
17 say go invest for us, we know it's Madoff -- and I'll show
18 you how they know that. But go invest for us effectively
19 through Fairfield in Madoff. And then their agent signed
20 subscription agreements, looks at PPMs that -- it's clear.

21 So again, two bases. One, imputation, which I
22 think is very strong. And I don't even think we have to get
23 to direct contacts but let me do that now.

24 Again, Your Honor, it is another case where an
25 investor, Bank Julius Baer, or BJB, had its agent front its

1 investments in Fairfield. Again, that agent was Citco. I
2 won't repeat my prior arguments regarding imputation of
3 Citco as agent, its conduct to its principal. All of that
4 applies here. Substantially all of BJB's arguments its
5 reply memorandum of August 2023 have been rejected by the
6 Court's memorandum opinions and orders earlier this year.
7 However, there are additional overwhelming facts here that
8 support personal jurisdiction. Many of the facts here are
9 similar to those in Picard v. Bank Julius Baer, 2022 WL
10 17726520, a Judge Morris decision from December of '22 where
11 she rejected BJB's efforts to have the Madoff trustee's
12 action against it dismissed for lack of personal
13 jurisdiction. I would urge you to look at that, Your Honor.
14 2022 WL 17726520.

15 I would like to highlight the following facts as
16 supported by the evidence we've submitted in the record.
17 Although for the most part BJB used its agent, Citco, to
18 invest in Fairfield, BJB itself received offering materials
19 including PPMs which, as we've seen before, highlighted
20 BLMIS's role including that substantially all of Fairfield's
21 assets would be invested with BLMISI and the split-strike
22 strategy.

23 And I would urge you to look at Exhibit 11, Your
24 Honor. This is something that was produced to us. I notice
25 there's no Bates because it was produced in native format.

1 I'll represent to you it was produced by Julius Baer. It's
2 a July 1st, 2000 Sentry information memorandum. So I guess
3 they could say, well, we didn't get that until 2007, '08,
4 '09. Today I can't prove otherwise. They produced it to
5 us. That's the date of it. I think that's enough. But
6 I'll do a lot better than that, but I just wanted to make
7 that point. And there's other references as well to Exhibit
8 -- there are later PPMs, which I know the point was made.
9 Those are Exhibits 29 and 30.

10 Our point is that we believe they demonstrate that
11 BJB knew it was investing in New York-based BLMIS
12 independent of its agents' conduct, which is clear.

13 BJB's agent, Citco, entered into 14 separate
14 subscription agreements. Those are at Exhibit 37. However,
15 on at least one occasion in connection with a transfer of an
16 investment, BJB itself signed a subscription agreement
17 containing provisions for governance of New York law and
18 consent to New York courts. That's Exhibit 6.

19 BJB sent 14 subscription payments to its agent
20 Citco's U.S. correspondent bank account at HSBC amounting a
21 total of almost \$3 million. That's Exhibit 38 and 39. The
22 record demonstrates that for 24 (indiscernible) Sentry
23 redemption payments that were made to BJB's agent, Citco,
24 totaling almost \$8 million, Citco instructed Sentry to wire
25 the redemption payments to Citco's U.S. correspondent

1 account at HSBC.

2 Your Honor, I just want to mention it again. I
3 don't want to go back over old ground. But the point was
4 made strongly, well, that's not our correspondent's bank,
5 it's our agent's correspondent bank. I would urge you to
6 look at Spetner, Your Honor. It's crystal clear that a
7 principal can be found to have jurisdictional contact based
8 on its agent's use of a correspondent bank. That's exactly
9 what happened here.

10 Your Honor, I want to hand up one -- and I
11 apologize, I don't have an extra copy. But it's our Exhibit
12 33. May I, Your Honor?

13 THE COURT: Of course. Please.

14 MR. JONAS: Because I just want to put a stake in
15 this.

16 THE COURT: Thank you.

17 MR. JONAS: Thank you. Exhibit 33, Your Honor.
18 If you look at Exhibit 33 -- and I've highlighted something
19 for you just to make it easy -- you'll see that this is an
20 email, March 19th, 2003 from -- and it's one of many
21 examples -- from FGG, which was Fairfield's manager, to
22 Johathan Morgan at Julius Baer. And look at his email
23 address, Your Honor. Jonathan.Morgan@JuliusBaer.com.
24 Confirming "the meeting with Mr. Bernard Madoff at Mr.
25 Madoff's office located at Bernard L. Madoff Investment

1 Securities, 885 Third Avenue, 18th Floor, New York, New
2 York." I don't think -- I heard an argument, well, there
3 might have been meetings, but we were talking about other
4 funds. FGG had lots of funds. I don't think, Your Honor --
5 I can't prove it. I don't think they met with Bernie Madoff
6 to talk about other FGG funds. They probably met with
7 Bernie Madoff, I think it's a reasonable supposition to talk
8 about Madoff funds. And that's what they did in 2003. They
9 continue to invest until 2007. I mean, how much more direct
10 contact with the jurisdiction to prove that they knew they
11 were investing in Madoff do I need to show? They went to
12 New York, they went to Madoff. They met with Bernie Madoff.
13 I assume they talked about the Madoff funds. And then they
14 continued to invest.

15 I think it's a slam dunk, Your Honor, on that
16 point, for their direct contacts. I don't think that
17 qualifies as fortuitous or random.

18 Your Honor, I also note, as we did in our papers,
19 Exhibit 18. BJB had its own direct separate agreement with
20 Fairfield's managers, FGL and FGG, to get paid for placing
21 investments into Fairfield. My point is they knew what was
22 going on, they were meeting with Madoff, they were in New
23 York, et cetera, et cetera. Thus, BJB itself directly had
24 numerous, knowing, purposeful, and repeated contacts with
25 the United States, New York, in an effort to obtain the

1 benefits which the U.S. securities market and banking system
2 offer. With those benefits come the burden of being subject
3 to U.S. jurisdiction. It's contacts were nor random,
4 fortuitous, or attenuated. They were anything but. And
5 their motion should be denied. Thank you.

6 THE COURT: Thank you, Counsel.

7 MR. HALPER: May I?

8 THE COURT: Please.

9 MR. HALPER: So just a couple of points, Your
10 Honor. First of all, just to emphasize, and I didn't really
11 do any response to this. The setup of these cases, the way
12 in which these investments were done through Citco Bank is
13 entirely and materially different from other cases that
14 you've heard and pointed to.

15 So even while we've reserved our rights, Your
16 Honor, we're not up here debating and rearguing old ground
17 on your holdings as to what the law is and/or even other
18 holdings in that regard. It's a factual exercise. And Mr.
19 Jonas -- and they did it in their original pleadings, they
20 did it in their brief with these exhibits, and they're doing
21 it again now. They want to kind of say, look, I'm going to
22 show you there's enough here. It's kind of the smoke,
23 there's got to be fire kind of argument. That's not the
24 jurisdictional analysis. They wanted the discovery.
25 They've now got to show factually supported averments that

1 support jurisdiction. It's not (indiscernible) stood right
2 here two seconds ago saying, look, I can't tell you what
3 they talked about in that meeting. I assume because they're
4 meeting with Madoff, who had an entire business, Fairfield,
5 who had an entire business that is not limited to Sentry,
6 that they must have been talking about Sentry and you just
7 have to take that on faith because either liquidators can't
8 give you any evidence of it. That is not the way
9 jurisdictional analysis works. That's not good enough to
10 support jurisdiction. And that's what he's asking you to
11 do, Your Honor.

12 Let me briefly mention the other decision, which
13 is referenced for another defendant and it's referenced
14 here. In another case, Julius Baer is a defendant in a case
15 brought by the Madoff trustee, by Picard. And he says,
16 well, there was findings there, end of story. Right?
17 Again, totally different. That case was based on the
18 pleadings. No jurisdictional discovery. So the entire
19 analysis is apples and oranges to what we're trying to do
20 here. All they had to do was -- and they did something that
21 the liquidators failed to do in five amended complaints.
22 They actually had specific allegations to support
23 jurisdiction. We dispute them. We don't think that they're
24 right. But they had them in their pleadings. And that was
25 decided on the pleadings. So that decision has no relevance

1 here and does not get them the quick here's the easy answer,
2 just look over there, nothing to see here. Completely
3 different.

4 And the same with the district court decision that
5 he was referencing that was addressing another defendant's
6 decision that was similar that they had taken up. Again, on
7 the pleadings. So it's just addressing a wholly different
8 type of jurisdictional analysis.

9 Exhibit 11 he pointed to. Again, he can see
10 there's no date. These are not sort of little details that
11 we can just sort of swap aside and ignore when inconvenient.
12 They need to make the jurisdictional case. And they've got
13 to show the facts, and they can't do it.

14 He points to Exhibit 33 with the meeting which we
15 just talked about. But he says it's one of many examples.
16 It's not one of many examples. We went through the few
17 examples that they point to. There's not that many, and
18 none of them get them where they need to get.

19 So again, unless you have any questions, Your
20 Honor, we'll rest there. And thank you for your time.

21 THE COURT: Thank you, Counsel.

22 MR. JONAS: Your Honor, I won't -- I'll just go to
23 something new that I missed, because I guess good lawyers
24 can see things different ways, Your Honor. But I'm just
25 baffled by the position that we haven't demonstrated

1 personal jurisdiction based on direct contacts and based on
2 imputation. But we will leave that to you, Your Honor.

3 I just wanted to -- one point. It's been said a
4 few times, this group pleading argument. And I did cite a
5 case previously, but I just want to come back to it because
6 it just strikes me that here we are ten-plus years into this
7 case. And I will say, Your Honor, our complaint at 114 we
8 allege that by virtue of brokerage and custody agreements
9 the Citco subscribers had acted as an agent for all of the
10 defendants. That would include BJB. At 44 we allege that
11 some or all of the redemption payments to the Citco
12 subscriber were paid to BJB, said that. Section C of the
13 complaint we described in detail the relationship between
14 the Citco subscriber and all of the defendants. So, first
15 of all, I think the complaint was good enough. Second of
16 all, it can't be the case that we can go through
17 jurisdictional discovery. Their position basically is we
18 can't even introduce jurisdictional discovery. It makes no
19 sense to me. We've done the discovery, we've produced the
20 record to you. I think it's more than satisfactory, and I
21 think you have to be cognizant of the record and the
22 evidence. And on all of these bases, Your Honor, we would
23 ask that Bank Julius Baer's motion to dismiss be denied.
24 Thank you.

25 THE COURT: Thank you, Counsel.

1 MR. HALPER: Your Honor, one short additional
2 point.

3 THE COURT: Just identify yourself for the record.

4 MR. HALPER: Sorry, Your Honor. Rick Halper again
5 for Bank Julius Baer. Your Honor, on the agency and
6 imputation point, again, they want to take refuge in that as
7 well. The exhibit that they really rely on that sets that
8 up is Exhibit 7. It's brokerage and custody agreement
9 between Citco Bank and Bank Julius Baer, all foreign
10 parties, all under foreign law subject to foreign
11 jurisdiction. And that is a general agreement that set up a
12 relationship that is not specific and makes no mention
13 whatsoever of Sentry, Fairfield, Madoff, et cetera.

14 So again, Mr. Jonas wants to come up here and say
15 imputation, and it's all out there. Well, we need the
16 evidence that ties -- if that's going to be the argument,
17 that ties Citco to Bank Julius Baer, not Citco to other
18 defendants or generally to Madoff or to other things that
19 they've done or they've been able to show in other contacts.
20 He didn't point you to one exhibit that really establishes
21 any of that. And it's the same thing. They're seeing a
22 theme and a pattern with the way the evidence is being used.
23 I don't think it adds up to jurisdiction, and we'll submit
24 that to Your Honor. Thank you.

25 THE COURT: Thank you, Counsel.

1 MR. HALPER: Nothing further, Your Honor. Thank
2 you.

3 THE COURT: Thank you. Okay. Shall we move on to
4 Agenda Item 6?

5 MR. GILMORE: Good morning, Your Honor. Kyllan
6 Gilmore of Winston & Strawn LLP representing Altipro
7 Masterfund (indiscernible) Altigefi-Altipro Master a/k/a
8 Olympia Capital Management in Adversary Proceeding 10-03627.

9 First I just want to thank you for accommodating
10 my request to work remotely. I really appreciate that. I
11 won't take up too much time rehashing things. But I do want
12 to briefly emphasize a couple of things about my client.

13 Altipro is a French fund that doesn't do any
14 business of any kind in the United States. And it didn't
15 directly invest in BLMIS or Fairfield Sentry Limited.
16 Instead, Altipro engaged Paribas Security Services, BNP for
17 short, which is a foreign broker, and BNP purchased the
18 subscriptions in Sentry. And like other of the defendants
19 we've heard from today, Altipro did not sign the Sentry
20 subscription agreements. Those were signed by BNP, which is
21 where the trustees have said the certifications about
22 independent investigation by the signatory and receipt of
23 the Sentry investing materials where that certification was.

24 And so the connection between Altipro and the
25 forum is a lot more attenuated than, for example, the

1 contacts the court found subjected HSBC to personal
2 jurisdiction in proceeding 10-03633. And I think that order
3 kind of confirms that no personal jurisdiction exists over
4 Altipro because the two reasons that Your Honor found
5 jurisdiction over HSBC do not apply. As you stated in the
6 January 4th, 2024 order summarizing on Page 25 after noting
7 that the sufficiency of context for personal jurisdiction is
8 assessed on the totality of the circumstances. The order
9 states that the Court "finds the defendant's selection and
10 use of U.S. correspondent accounts and communications with
11 Fairfield Greenwich Group support the Court's exercise of
12 jurisdiction." So it was this combination or totality that
13 the Court found sufficient, but neither of those factors
14 apply.

15 First, unlike HSBC, Altipro has never had or used
16 any U.S. correspondent account and didn't direct anyone else
17 to do so. Plaintiffs do allege that BNP and Sentry used
18 U.S. correspondent accounts in redeeming Altipro's
19 subscriptions, but Altipro did not direct BNP to do that or
20 have any control over BNP's use of U.S. correspondent
21 accounts. And as the Court put it on Page 19 of that order,
22 it's "a defendant's selection and repeated use of a New York
23 correspondent account (indiscernible) the specific selection
24 was at the defendant's direction (indiscernible) can show
25 the kind of purposeful and continuous contact

1 (indiscernible) to support jurisdiction.

2 And so the use of correspondence accounts, which
3 was pretty central to that ruling, really doesn't support
4 any jurisdiction over Altipro here.

5 And the second thing that the Court relied on in
6 the communications with Sentry, we've heard from other
7 defendants' discussions of those and their relevance. And
8 what's most important to note about Altipro is that there's
9 no allegations that those meetings took place in New York.
10 There's allegations that there were meetings with "New York
11 personnel", but not in-person meetings in New York.

12 So just to recap, I think (indiscernible) those
13 two contacts with the forum which are so central to the
14 finding by the Court of personal jurisdiction in that case
15 don't really apply to Altipro. There's not other contacts
16 alleged that would contribute to that totality analysis,
17 there really isn't a prima facie case for jurisdiction over
18 Altipro, which the Plaintiffs really understand, which is
19 why they go to such great pains in their complaint and their
20 opposition to the motion to dismiss to argue that BNP is an
21 agent for Altipro. But I think somewhat ironically, the
22 line of agency cases that plaintiffs cite really confirm
23 that there's no personal jurisdiction here because there's
24 cases, as we explain in our reply, they describe
25 circumstances where one party's conduct in the forum can be

1 attributed to a foreign third party for the purposes of
2 establishing jurisdiction. The sort of punchline for those
3 cases, consistent with agent principles generally, is that
4 conduct in the forum by one party cannot be attributed to a
5 foreign third party without establishing an agency-type
6 relationship between them, which makes sense given the
7 Supreme Court's (indiscernible) in Fiore and McIntyre where
8 the court held that it's the defendant's conduct in the
9 forum that has to support jurisdiction. It's a basic school
10 of agency law that you need an agency relationship before
11 there can be this imputation.

12 And so I think plaintiffs allege that BNP acted as
13 (indiscernible) agent in purchasing and redeeming shares,
14 but as other defendants have noted, that relationship, those
15 exchanges were all foreign. So the agency relationship that
16 is relevant here is that, you know, those foreign
17 transactions, but Altipro had no control over the
18 transactions in the forum or BNP's conduct in or connections
19 with New York. That's what's required to impute those
20 connections.

21 So to give you just a couple of cases that we
22 cite, In re Sumitomo Copper Litigation, 120 F. Supp. 2d 328
23 (S.D.N.Y. 2000), "Plaintiff's allegations must persuade a
24 court that the defendant was a primary actor in the specific
25 matter in question. Plaintiffs must show that defendants

1 exercised some control over the corporation in that
2 transaction."

3 And then in another case, Retail Software
4 Services, Inc. v. Lashlee, 854 F.2d 18 (2d Cir. 1988),
5 personal jurisdiction based on agency where corporate
6 officers "exercise extensive control over corporation in the
7 transaction underlying suit".

8 And then in the cases that plaintiffs cite in
9 their briefing, consistent with that idea, those cases all
10 found personal jurisdiction but based on transactions that
11 occurred in the forum itself. And so just to quickly kind
12 of give you a few examples, Hartford and (indiscernible)
13 case they cite, the agents were directed to procure New York
14 insurance policies (indiscernible). There were extensive
15 in-person meetings in New York in (indiscernible) by the
16 agent negotiating on behalf of the foreign principal. In
17 the Schecter case, the agent was directed to sign documents
18 related to transactions that occurred in New York. And the
19 last case, the Bernie Madoff case they cite actually is that
20 they do have personal jurisdiction, but rather whether
21 certain actions taken were within the scope of an undisputed
22 agency relationship.

23 And unlike the situation here, just to kind of
24 reiterate, these cases all involved extensive control by a
25 foreign principal over (indiscernible) actions in New York.

1 And just to cite one more case. Charles Schwab
2 Corp. v. Bank of Am. Corp., 883 F.3d 68 (2d Cir. 2018), the
3 Second Circuit found there was no agency alleged for the
4 principles "controlled or directed" broker dealers who sold
5 securities on their behalf without factual allegations that
6 the principals "availed themselves of California by
7 directing their agents to transact there," emphasis added.

8 So I think in this case it's important to note
9 that BNP was not directed to do anything in the forum and
10 BNP's actions within the forum, the use of its correspondent
11 accounts, was not activity that was within that scope of
12 that limited agency relationship. Instead, it's really
13 Sentry that is alleged to have acted in the forum. And that
14 conduct can't be attributed to Altipro because Sentry isn't
15 even alleged to be an agent. And there is no allegations of
16 control that support any allegation of agency there.

17 So I think again it's important to note that all
18 of these agency's cases really stand for the sensible
19 proposition that a plaintiff that's alleging personal
20 jurisdiction over a foreign party based on conduct by
21 another party in the forum has to establish a relevant
22 agency relationship. And it's really the fact that that
23 whole line of cases exists. They would essentially be
24 meaningless if the Court wasn't required to find an agency
25 relationship before third party conduct could be -- in the

1 forum could form, you know, a basis of personal jurisdiction
2 over a foreign defendant like Altipro.

3 So I think just to quickly summarize this point,
4 the two reasons that the Court found jurisdiction over HSBC
5 did not support personal jurisdiction over Altipro, which
6 didn't use any U.S. correspondent accounts or engage in any
7 conduct in the forum, and Altipro does not do business in
8 the United States, only indirectly purchased subscriptions
9 in Sentry and didn't even sign the subscriptions. And
10 there's no other relevant contacts that would justify
11 jurisdiction. And BNP and Sentry's conduct in the forum
12 can't serve as a basis for jurisdiction for the reasons that
13 we just discussed.

14 So Plaintiffs really haven't alleged a prima facie
15 case for personal jurisdiction over Altipro, and there's no
16 way they can remedy this with any additional discovery or
17 amendments to the complaint.

18 And to quickly conclude, I think that the Court's
19 finding in the HSBC case that jurisdiction wouldn't be
20 unreasonable against that defendant also doesn't really
21 apply to Altipro. I think that here Altipro doesn't have
22 any U.S. affiliates or other business connections and the
23 burden is really pretty substantial to defend against a case
24 in the United States. And the forum I think has very little
25 interest in forcing it to do so here because there really is

1 just no evidence connecting Altipro to any of the
2 wrongdoing. And the interest is really stronger with
3 respect to defendants that do business in the United States.

4 So that kind of wraps up the couple points I
5 wanted to make. I'll just conclude by reiterating our
6 request that the Court grant Altipro (indiscernible)
7 dismiss. Thank you very much.

8 THE COURT: Thank you, Counsel.

9 MR. JONAS: Your Honor, Jeff Jonas, Brown Rudnik,
10 for the liquidators in opposition to that motion to dismiss.

11 Your Honor, Altipro was a recipient of about \$15
12 million in redemptions. That's what this case is about. As
13 stated, Altipro used BNP Paribas Security Services S.A.,
14 I'll refer to them as BNP, as its agent for investments in
15 Fairfield Sentry. I won't repeat my prior arguments
16 regarding imputation of an agent's conduct to a principal
17 which apply here, except I want to come back to it in a
18 minute very briefly.

19 Substantially all of Altipro's argument that's in
20 its reply memorandum dated October 10th, 2023 have been
21 rejected by the court's memorandum opinions and orders
22 earlier this year.

23 Your Honor, we have put forth evidence at Exhibits
24 10 and 11 that we believe confirms that Altipro
25 independently and directly conducted diligence on Sentry,

1 including receiving materials relating to the investments
2 and knowing they would be placed with BLMIS. That includes
3 some of the offering materials. Altipro was agent. BNP
4 used U.S. correspondent banks to make subscription payments
5 and receive redemptions. Altipro's agent, BNP, signed
6 subscription agreements with all of the -- which we believe
7 evidences the Madoff Investment, New York law courts, et
8 cetera.

9 So with that, Your Honor, I just want to turn
10 briefly to some of the arguments that were made because I
11 really view them as continuing to dance on the head of a
12 pin.

13 This defendant, like many of the defendants, they
14 went out and they hire -- and there's no other word that
15 describes it -- they hired an agent to make this investment
16 for them. The agent as part of the requirements to make
17 that investment, yes, signed subscription agreements, used -
18 - they were theirs, but they had to use -- well, they didn't
19 have to actually, but they did, they used their U.S.
20 correspondent bank accounts, et cetera, et cetera, et
21 cetera.

22 And what these defendants continually tried to do
23 is say, well, yeah, they were our agent for the investment,
24 but it only -- that only goes so far. That -- it just -- it
25 really -- to me it's dancing on the head of a pin. How can

1 you separate when you hire someone to make an investment for
2 you if in connection with that investment they have to
3 undertake the -- they're doing that on your behalf. And
4 again, I come back to Spetner, Your Honor 70 F.4th 632,
5 2023. Second Circuit Court of Appeals found that, a foreign
6 bank's choice -- that's the principal -- to project itself
7 into New York can be efficient through the selection of
8 repeated use of an agent's correspondent account in the
9 forum. Well, its agent was using a correspondent bank
10 account. And that's effectively -- it's got to be imputed
11 back to the principal.

12 Okay. Your Honor, last, I think we've -- I agree
13 it's more limited than some of the other cases, but we have
14 introduced into the record Altipro conducting independent
15 and direct diligence relating to Fairfield, including
16 visiting Fairfield's manager, FGG in New York. Those are
17 Exhibits 7 through 9 and 12 through 14.

18 And as is the case with the other defendants
19 discussed today, Altipro itself had numerous, knowing,
20 purposeful, repeated contacts with the United States, either
21 itself or through its agent, in an effort to obtain the
22 benefits of the U.S. securities market, its contacts were
23 not random, fortuitous, or attenuated. And we would ask
24 that the motion to dismiss be denied. Thank you, y h.

25 THE COURT: Thank you, Counsel.

1 Counsel did you wish to reply?

2 MR. GILMORE: Yes, Your Honor, briefly. This is
3 Kyllan Gilmore with Winston Strawn on behalf of Altipro.

4 First, I just want to sort of reiterate the
5 caselaw that the trustees (indiscernible) addressed the
6 relevant agent conduct for the purposes of attributing
7 conduct with the forum to a foreign defendant has to be
8 conduct in the forum, which again, is consistent with the
9 Supreme Courts caselaw which focuses on the defendant's
10 conduct and contacts with the forum. And so it stands to
11 reason that it would be the Defendant's agent's contact and
12 conduct in the forum that would have to serve as the basis
13 for the foreign defendant's personal jurisdiction if it
14 wasn't the foreign defendant's conduct in the forum.

15 And here, the trustee acts like there's an effort
16 to use these foreign brokers as a front of some kind, but
17 the agency relationship really does only go so far. It's
18 basic principle of agency law that agency relationship is
19 defined with respect to a specific relationship or set of
20 transactions. And here, according to their own legal
21 standards, the alleged agent has to act in the forum for the
22 benefit of the principal with knowledge and consent of the
23 principal and under some control by the non-resident
24 principal. Here, they haven't alleged that there was any
25 control or even knowledge on behalf of Altipro's part with

1 respect to what BNP or Sentry was specifically doing in the
2 forum, for example, the use of these correspondence
3 accounts. And the plaintiffs allege that there was
4 information in Altipro's possession that could have led it
5 to form the conclusion that U.S. correspondence accounts
6 were going to be used. But again, this Court's ruling over
7 HSBC makes it clear that it is the direction by principals
8 to use U.S. correspondence accounts. And even that has to
9 be repeated in continuous contact. That is what makes those
10 U.S. correspondent accounts relevant for purposes of
11 establishing personal jurisdiction over a foreign defendant.
12 So with that I will just conclude by saying I think there's
13 been a lot of discussion here over the scope of this agency
14 relationship and a lot of that sort of ignores the fact that
15 the cases are clear it's really transactions in the forum by
16 the agent that are relevant. Thank you.

17 THE COURT: Thank you, Counsel. Okay. Shall we
18 proceed to the next agenda item?

19 MR. JONAS: Last but not least, Your Honor.

20 MR. SHAIMAN: May I proceed, Your Honor?

21 THE COURT: please.

22 MR. SHAIMAN: Good afternoon, Your Honor. David
23 Shaiman of Allegaert Berger & Vogel. And with me is my
24 colleague, Lauren Pincus.

25 THE COURT: Good afternoon.

1 MR. SHAIMAN: We are here on behalf of Rothschild
2 & Co. Asset Management, formerly known as Rothschild & Cie
3 Gestion as manager of the Elan Gestion Alternative Fund,
4 which was sued as Rothschild & Cie Bank-Ega. I will refer
5 to them as Rothschild for simplicity. I will be very brief,
6 Your Honor.

7 You've heard arguments from my colleagues today
8 and back in October that apply equally to Rothschild, and I
9 won't repeat them here. I'll just say that we join in all
10 of those arguments and they are set out at length in our
11 briefs.

12 What I do want to focus the Court on, however, is
13 the extent to which Rothschild's contacts with the U.S. are
14 lacking here.

15 First and foremost, Rothschild did not redeem from
16 Fairfield Sentry. Rothschild had a single redemption from
17 Fairfield Sigma which was denominated in Euros. This means
18 that Rothschild did not employ a U.S. correspondent account
19 in connection with its single redemption and the liquidators
20 do not allege that the redemption was paid in or through a
21 U.S. bank account, because it was not.

22 The only connections the liquidators point to then
23 are in the form of communications and meetings with
24 Fairfield personnel. But here those meetings and
25 communications were almost exclusively with Fairfield

1 personnel outside of the U.S. In particular, the
2 liquidators point to two meetings which both took place in
3 Paris and which were both with Fairfield personnel resident
4 in the U.K. They also point to an internal Fairfield email
5 about a possible meeting in the U.S., but there is no
6 evidence that meeting took place and it's not clear from the
7 internal Fairfield email if that proposed meeting was meant
8 to be about Sentry or another non-Madoff fund marketed by
9 Fairfield.

10 The liquidators also attached the Flugman
11 declaration, 21 emails between Fairfield and Rothchild
12 personnel which they claim demonstrate diligence Rothschild
13 conducted on the Fairfield funds. But of those 21 emails,
14 17 are with Fairfield personnel in the U.K., Spain, or
15 Bermuda. The other four emails which at least appear to be
16 with Fairfield personnel in the U.S., are ministerial in
17 nature. One asked to be added to a mailing list, another
18 provides a prospectus expressly on behalf of a Fairfield
19 employee in Spain. And the final two emails simply transmit
20 weekly nav reports.

21 Simply put, Rothschild, which redeemed only from
22 Sigma, did not use a U.S. based correspondent bank account
23 and communicated almost exclusively with Fairfield personnel
24 located outside of the U.S. is not reasonably subject to
25 jurisdiction in the U.S.

1 Unless Your Honor has any questions, we'll rest on
2 our papers for our remaining arguments and submit to Your
3 Honor that the motion should be granted.

4 THE COURT: Thank you, Counsel.

5 MR. SHAIMAN: Thank you.

6 MR. JONAS: Jeff Jonas, Brown Rudnick, for the
7 liquidators. I hope you remember, Your Honor, at the
8 beginning of this argument when I -- and since then I kept
9 making the point that per the district court all you need to
10 do is show knowing -- show that an investment purposely and
11 knowingly was -- knew they were investing in Madoff, taking
12 advantage of U.S. securities (indiscernible). This was the
13 case I was really making -- I wanted to make the point too,
14 but this was the one I was talking about. We are not
15 alleging use of correspondent banks, Your Honor. We're not
16 alleging direct meetings in New York. I don't take issue
17 with any of those statements. But yet I still think the
18 motion to dismiss should be denied. So let me tell you why.

19 Rothschild used BNP Paribas as its agent for
20 investments in Fairfield. And I won't repeat my prior
21 arguments regarding imputation of an agent's conduct to the
22 principal. They all apply here, Your Honor, and I think
23 carry the day.

24 However, we believe we've also met our burden with
25 respect to personal jurisdiction over Rothschild based on

1 the following.

2 We've submitted evidence into the record
3 confirming certain direct interactions by Rothchild with
4 Fairfield's U.S.-based manager, FGG, including Rothschild
5 seeking and obtaining diligence materials. Those are
6 Exhibits 14 through 16 and 21 and PPMs which as we've seen
7 made it clear to Rothschild they were investing in New York-
8 based BLMIS and the U.S. securities markets. That's Exhibit
9 34 and Exhibit 35, Exhibit 37.

10 The evidence also establishes that either
11 Rothschild or its agent, it's a little bit unclear on this
12 one, Your Honor, entered into a subscription agreement
13 providing for governance under New York law and consent to
14 the jurisdiction of the New York courts. Even accepting it
15 was its agent, Your Honor, for all the reasons I stated, I
16 think that's enough. That's Exhibits 35 and 37. And based
17 on the evidence, Your Honor, again, none of this was random,
18 fortuitous, or attenuated. Rothschild knew it was investing
19 in Madoff. They wanted to take advantage of the U.S.
20 securities market, it did. And on that basis even alone,
21 Your Honor, the motion to dismiss should be denied. Thank
22 you.

23 THE COURT: Thank you, Counsel.

24 MR. SHAIMAN: David Shaiman of Allegaert Berger &
25 Vogel on behalf of Rothschild. Just two quick points, Your

1 Honor. All of the emails and exhibits that Mr. Jonas cited
2 to exactly make our point. Those were diligence materials
3 which were asked for from FGG employees located outside of
4 the U.S. They were not FGG U.S. employees.

5 And on the BNP point, as I said, we're not going
6 to retread the arguments that have been made today. We join
7 in the arguments that our colleagues have made on that
8 point. Thank you.

9 THE COURT: Thank you, Counsel.

10 MR. JONAS: Nothing further, Your Honor. Thank
11 you.

12 THE COURT: Thank you, Counsel. I will take all
13 of the motions under advisement that we've heard today.
14 Anything else for today?

15 MR. JONAS: Not from us, Your Honor. Thank you
16 very much for your patience with us today.

17 THE COURT: Okay, we are adjourned. Thank you for
18 the excellent presentations, everyone. Have a great day.

19 (Whereupon these proceedings were concluded at
20 12:52 PM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.

Sonya Ledanski Hyde



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Date: May 6, 2024

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